

2. Legal

Employees have a right to necessary health treatment under TEX. LABOR CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) provides “An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.” Section 401.011(19) of the Labor Code provides that health care includes “all reasonable and necessary medical . . . services.”

The version of Commission Rule 133.307(j)(2) in effect at the time of the request for medical dispute resolution provided:

(j) Complete Response. . . .

(2) The response shall address only those denial reasons presented to the requestor prior to the date the initial request for medical dispute resolution was filed with the division and the other party. Responses shall not address new or additional denial reasons or defenses after the filing of an initial request. Any new denial reasons or defenses raised shall not be considered in the review.²

As Appellant, Royal has the burden of proof.³

2. Failure to Send EOBs

1. Parties’ Contentions/Evidence Although Dr. Higbee did not testify on the subject, Alta submitted a chart on the disputed services that said “No EOB Received” for each service in dispute.⁴ The records indicate that MRD analyzed the dispute without the knowing Royal’s reasons for denying the claim—none of Royal’s denial codes are listed in the MRD decision.⁵

Royal presented the following evidence from Troy Arrington, its senior claims adjuster assigned to this case, on the issue of whether Royal provided the EOBs: he was responsible for handling the claim; his normal course of business is to always respond to claims; if a claim is disputed, he always indicates the denial codes on the EOBs; he has never failed to respond to a claim although his assistant has been late on a few occasions; in other disputes between Alta and Royal,

Alta has contended it did not receive EOBs; and he cannot prove that Alta received the EOBs.

²The current version of the rule reads almost the same, with the adjective “initial” before “request” removed.

³28 TEX. ADMIN. CODE § 148(h).

⁴Ex. 1 at 2.

⁵Ex. 4. Royal’s response to the Request for Medical Dispute Resolution shows that Royal received it. Ex. 1 at 1. However, it does not appear that Royal provided the missing EOBs to MRD for its review as required by 28 TAC § 133.307(e)(2)(B). That rule says that upon receipt of the initial request for medical dispute resolution, the respondent shall provide any missing information required on the form, including absent EOBs not submitted by the requestor with the initial request. . . .”

2. Analysis

This decision concludes that Royal's reasons for denying payment should not be considered based on evidence that it did not inform Alta of its reasons for denial before the request for medical dispute resolution. Commission Rule 133.307(j)(2) says only those denial reasons presented to the requestor prior to the date of the initial request for medical dispute resolution will be considered.⁶

Under principles of controlling evidentiary law, Alta did not receive the EOBs from Royal. Alta's chart of disputed services shows that no EOBs were provided. (MRD did not appear to have any EOBs for its review.) The only indication that Royal sent the EOBs is from Mr. Arrington, who said it is his customary practice to always send EOBs with appropriate denial codes when a claim is denied. However, when the sender of a document relies on office routine or custom to support an inference that the document was mailed, the sender must provide corroborating evidence that the practice was actually carried out.⁷ There was no corroborating evidence in this case. Moreover, even if there had been corroborating evidence raising a rebuttable presumption that Royal received the EOBs, the presumption is not evidence itself. It vanishes when there is evidence rebutting it.⁸

Although this ruling may seem somewhat strict under the circumstances of this case, evidentiary law is against Royal on this issue.⁹

IV. Findings of Fact

1. On ____, the Claimant was an employee of ____, a company that unloads trucks for ____, when he slipped on a ramp and struck his knee.

⁶This decision is the same in principal as the majority view in previous SOAH dockets where ALJs have ruled that an insurer may not assert a reason for denying a claim that was not provided to the health care provider prior to the filing of a request for medical dispute resolution. See SOAH Docket No. 453-01-1958.M5 (ALJ Corbitt); SOAH Docket No. 453-01-0309.M5 (ALJ Doherty); SOAH Docket No. 453-00-1570.M5 (ALJ Smith); SOAH Docket No. 453-99-3399 (ALJ Pacey); SOAH Docket No. 453-99-2021.M5 (ALJ Rusch); SOAH Docket No. 453-97-0973.M4 (ALJ Card); and SOAH Docket No. 453-96-0817.M4 (ALJ Corbitt). These cases were decided before the issuance of Rule 133.307(j)(2) and were based largely on § 408.027(d) of the Act, which states if an insurer disputes the amount of payment or the health care provider's entitlement to payment, it must send to the Commission, the provider, and the injured employee a report that "sufficiently explains the reasons for the reduction or denial of payment. . . ."

⁷*Wembley Investment Company vs. Herrera*, 11 S.W.3rd 924, 928 (Tex. 1999); *Texas Employers Insurance Ass'n. V. Wermske*, 349 S.W.2d 90, 92 (Tex. 1961); *State Mutual Fire Insurance Company v. Williams*, 924 S.W. 2d 746, 749 (Tex. App.B1996, no writ).

⁸*Cliff v. Huggins*, 724 S.W. 2d 778, 780 (Tex. 1987); *State Mutual* at 749.

⁹Alta cited this ALJ's decision in Docket No. 453-02-0731.M5 as supporting its assertions that it did not receive adequate notice of Royal's reasons for denying the claim. A review of the findings of fact in that decision shows it was based on the insurance carrier's failure to provide a copy of a peer review to the provider after being requested to do so several times. The ALJ hereby disavows any additional language in the decision that says a carrier's citation to any denial code without further explanation is always inadequate under applicable law.

2. The Claimant presented to an Alta Healthcare Clinic (Alta) chiropractor, who recommended that he undergo work hardening at Alta, which he did beginning on October 25, 2001, and ending on November 8, 2001. Alta provided office visits and other services until March 20, 2002.
3. Alta filed a claim for the services with Royal Indemnity Company (Royal), the workers' compensation insurance carrier for World Super Service.
4. Alta denied the claim, but did not provide Alta with its reason for the denial before Alta requested medical dispute resolution.
5. In September 2002, Alta filed a request for medical dispute resolution.
6. The total disputed amount at MRD was \$4,613.80; however, at the beginning of the hearing, Alta said it did not dispute the following findings against it by the Texas Workers' Compensation Commission Medical Review Division: under CPT code 97750-FC, regarding a \$100.00 dispute; under CPT code 99213, where \$142.00 for three office visits was in dispute; and under CPT code 97113, regarding a \$156.00 dispute.
7. Based on Finding of Fact No. 6, the total amount in dispute in this case is \$4,215.80.
8. All parties received not less than 10 days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
9. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

V. Conclusions of Law

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided. TEX. GOV'T CODE ANN. §2001.052.
3. Royal has the burden of proof in this matter. 28 TEX. ADMIN. CODE § 148.21(h).
4. Royal failed to carry its burden of proving that it provided Alta with its reasons for the denial before Alta requested medical dispute resolution.
5. Royal did not prove that the services provided by Alta should not be paid.
6. Royal should be required to pay for the services in dispute. TEX. LAB. CODE ANN. §§ 401.011, 408.021, and 408.027(d); 28 TEX. ADMIN. CODE § 133.307(j)(2).

ORDER

IT IS, THEREFORE, ORDERED that Royal Indemnity Company pay Alta Healthcare Clinic \$4,215.80 plus interest for services performed for the Claimant between October 25, 2001, and March 20, 2002.

Signed this 7th day of October, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

James W. Norman
Administrative Law Judge