

TRANSCONTINENTAL
INSURANCE COMPANY,
Petitioner

v.

JACOB ROSENSTEIN, M.D.,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. SUMMARY

Transcontinental Insurance Company (Carrier) appealed the Decision and Order of the Medical Review Division (MRD) of the Texas Worker's Compensation Commission (TWCC) ordering reimbursement to Jacob Rosenstein (Provider) in the amount of \$1,517.50 for treatment of a compensable injury. The Administrative Law Judge (ALJ) concludes the Carrier should reimburse the Provider for treatment provided to Claimant.

II. PROCEDURAL HISTORY, EVIDENCE, AND BASIS FOR DECISION

No party contested notice or jurisdiction, therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing commenced January 12, 2004, before ALJ Michael J. Borkland. The Carrier was represented by David Swanson, attorney. The Provider appeared *pro se* via telephone. The hearing concluded that same day.

The issue presented is whether the Carrier is relieved of any responsibility to reimburse the Provider for CPT code 22554 (arthrodesis) because that procedure is included in or global to CPT code 63081 (vertebral corpectomy). The documentary record consisted of the operative report (Exh. 1), the Provider's bill (Exh. 2), the explanation of benefits (Exh. 3), the MRD Decision and Order (Exh. 4), and page 329 from the Global Service Data for Orthopaedic Surgery (GSDOS) publication. Additionally, oral testimony was given by Susan Crawford Ackerman, R.N., and Nicolas Tsourmas, M.D., on behalf of the Carrier. The Provider testified in his own behalf.

Ms. Ackerman is employed by Medical Business Management Services, the company which reviewed the Provider's bill and issued an explanation of benefits denying payment for CPT code 22554. She has over 12 years of experience reviewing medical bills, and she testified that payment was denied because CPT code 63081 is inclusive of CPT code 22554.

Ms. Ackerman explained that the GSDOS provides that spinal arthrodesis (CPT codes 22558 and 22585) are included in vertebral corpectomy of the lower thoracic and lumbar levels (CPT code 63087). She stated that while the GSDOS does not specifically mention the CPT codes at issue, the global concept is applicable because the book does not have a separate entry for each spinal level

and CPT code. Rather, the GSDOS is used as a guideline by plugging in the appropriate codes for a given spinal level. According to Ms. Ackerman, she has consistently applied the GSDOS in this manner and there are no prior cases because only this Provider has ever contested the issue as far as she knows.

Dr. Tsourmas has been in the private practice of medicine for 20 years and is board certified in orthopaedic surgery. He is the medical director for several carriers and is familiar with reviews and audits of billing information.

In preparation for his testimony, Dr. Tsourmas reviewed the Provider's operative report and concluded that the procedure was a typical anterior cervical fusion with instrumentation. He testified that the Provider is not entitled to additional reimbursement because a spinal arthrodesis is global to corpectomy. According to Dr. Tsourmas, the various CPT codes for vertebral corpectomy and arthrodesis are for the same procedure at different spinal levels.

The Provider testified that the Claimant required an aggressive corpectomy, which takes longer, because bone fragments had to be removed. He stated that the North American Spine Society provides that CPT code 22554 is not global to CPT code 63081.

The Carrier was unable to carry its burden of proof because the ALJ is in the position of having to speculate about what the outcome should be because TWCC has not addressed the issue. In order to conclude that the Carrier is not required to make reimbursement, the ALJ has to find that arthrodesis (CPT code 22554) is global to corpectomy (CPT code 63081) even though the GSDOS and other authorities do not directly say so. It would be unduly speculative for the ALJ to step in TWCC's shoes and fill in the blanks. Accordingly, the ALJ concludes that the Carrier's appeal must be denied.

III. FINDINGS OF FACT

1. ____, the Claimant suffered a compensable injury to her cervical spine.
2. The Claimant's injury is covered by workers' compensation insurance written for the Claimant's employer by Transcontinental Insurance Company (Carrier).
3. The Claimant was treated for the compensable injury by Jacob Rosenstein, M.D. (Provider).
4. The Provider treated the Claimant's injury with an anterior cervical fusion with bone graft and instrumentation.
5. The Provider billed the Carrier for arthrodesis (CPT code 22554) and corpectomy (CPT code 63081).
6. The Carrier denied payment for CPT code 22554 on the basis that it is global to CPT code 63081.
7. The Provider timely requested dispute resolution by the Medical Review Division of the Texas Workers' Compensation Commission (Commission).

8. On May 28, 2003, the Commissions's Medical Review Division issued its Findings and Decision ordering the Carrier to reimburse the Provider \$1,517.50 for the treatment referred to in Findings of Fact Nos. 4 and 5.
9. On June 17, 2003, the Carrier filed a request for hearing to contest the order for reimbursement referred to in Finding of Fact No. 8.
10. The Commission sent notice of the hearing to the parties on July 22, 2003. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
11. The hearing was held on January 12, 2004, and all parties appeared and participated.
12. Arthrodesis (CPT code 22554) was not shown to be global to corpectomy (CPT code 63081).

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (TWCC) has jurisdiction to decide the issues presented pursuant to TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Decision and Order, pursuant to TEX. LAB. CODE ANN. § 413.031 and TEX. GOV'T CODE ch. 2003.
3. The Notice of Hearing issued by TWCC conformed to the requirements of TEX. GOV'T CODE §2001.052.
4. The Carrier has the burden of proving by a preponderance of the evidence that it should prevail in this matter. TEX. LAB. CODE ANN. § 413.031.
5. Based on Finding of Fact No. 12 and Conclusion of Law No. 4, the Carrier is required to reimburse Provider.

ORDER

IT IS, THEREFORE, ORDERED that the Transcontinental Insurance Company shall reimburse Jacob Rosenstein, M.D. for fees incurred in treating the Claimant in the amount of \$1,517.50.

SIGNED February 17, 2004.

**MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**