

**LIBERTY MUTUAL FIRE
INSURANCE COMPANY,
Petitioner**

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BEFORE THE STATE OFFICE

V.

OF

**JOSEPHAT A. OKEREKE, D.C.,
Respondent**

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

Liberty Mutual Insurance Company (Petitioner) appealed the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through Ziroc, an Independent Review Organization (IRO), finding chiropractic treatments provided by Josephat A. Okereke, D.C., (Respondent) were medically necessary for the treatment of injured worker ____ (Claimant).

After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that Liberty Mutual Fire Insurance Company (Respondent) is liable for reimbursing Petitioner the sum of \$16,605.00, plus any applicable interest, for the chiropractic treatment.

The hearing convened on November 10, 2003, with State Office of Administrative Hearings ALJ Howard S. Seitzman presiding. Petitioner appeared through its counsel, Charlotte Salter. Respondent appeared *pro se*. Bernie L. McCaskill, M.D., a board certified orthopaedic surgeon, testified for Petitioner and Respondent testified on his own behalf. The hearing concluded and the record closed that same day. Neither party objected to notice or jurisdiction.

Claimant, then 46-years old, suffered a work related injury on ____, while moving a printer. On or about June 15, 2002, Respondent began treating Claimant on a three visits per week schedule for severe pain in Claimant's lower back. On July 29, 2002, Claimant underwent an MRI of the lumbar spine which revealed disc herniations at L3-4 and L4-5, as well as disc protrusions at L1-2 and L2-3. On August 20, 2002, A.J. Morris, M.D., examined Claimant and concluded that he had a "decreased range of motion at the waist on flexion and extension...and spasms of paravertebral muscles L1-L4 bilaterally, right to left." Dr. Morris also noted that Claimant should continue chiropractic treatment with Respondent.

On September 19, 2002, Francisco J. Battle, M.D. examined Claimant and noted the July 29, 2002 MRI of the lumbar spine "demonstrated a herniated nucleus pulposus broad based at L3-L4 and L4-L5...with associated bilateral foraminal stenosis and lumbar spinal hypertrophy at both L3-L4 and L4-L5." Disc dessication was also noted at both L3-L4 and L4-L5. Dr. Battle concluded Claimant was a surgical candidate.

On October 22, 2002, Subhash Chander, M.D., the Commission Designated Doctor, evaluated Claimant. Dr. Chander concluded Claimant had a lumbar sprain/strain and lumbar disc herniations/protrusions related to the compensable injury. Because Claimant had not reached Maximum Medical Improvement (MMI), Dr. Chander did not assign an impairment rating.

Dr. Battle examined Claimant on December 9, 2002, and no significant change was noted. Dr. Battle did recommend an evaluation for epidural steroid therapy. On February 19, 2003, Dr. Battle conducted a third examination of Claimant and noted Claimant's continued improvement in symptomology. Follow-up visits were to be scheduled on an "as-needed" basis and no prescriptions were written. Dr. Battle examined Claimant again on May 16, 2003, noted continued symptomology, and recommended epidural steroid therapy. Claimant underwent epidural steroid therapy during the late summer of 2003. Claimant is not working as a result of a layoff by his employer.

Petitioner denied chiropractic treatments from August 26, 2002, through January 17, 2003, as not medically necessary. Petitioner contends (1) Claimant's pain was mechanical back pain caused by injury to ligaments; (2) a lumbar sprain/strain should resolve without treatment within six to twelve weeks; (3) reasonable conservative chiropractic treatment should extend no longer than twelve weeks; and (4) no substantive improvement occurred during the chiropractic treatment.

Dr. McCaskill's interpretation of the July 29, 2002 MRI report is that Claimant exhibits degenerative changes at every level, due to age, and moderate spinal stenosis at the L4-L5 level that is of insufficient severity to generate neurological problems. He also finds in the report no evidence of nerve root compromise.

The only issue in this proceeding is whether the chiropractic treatments from August 26, 2002, through January 17, 2003, were medically necessary. Claimant experienced pain as the result of a compensable injury to the lumbar spine. Though Respondent's handwritten reports are difficult to read and do seem to indicate little improvement early in the treatment, relief from the level of pain does occur beginning in September of 2002. Claimant's description of his pain, on the one through ten scale, began at 9/10 (severe) and decreased to 4/10 (moderate). Additionally, following their examinations, both Drs. Morris and Battle continued to recommend Claimant continue with chiropractic therapy.

Petitioner had the burden of proof. The Claimant experienced pain from the compensable injury to his lumbar spine. The evidence shows that during the chiropractic treatments between August 26, 2002, and January 17, 2003, Claimant did obtain some relief for his pain. Petitioner failed to demonstrate by a preponderance of the evidence that the chiropractic treatments were not medically necessary.

Petitioner is entitled to recover \$16,605.00, plus any applicable interest.

II. FINDINGS OF FACT

1. ____ (Claimant) suffered a work related injury on ____, while moving a printer. On or about June 15, 2002, Josephat A. Okereke, D.C., (Respondent) began treating Claimant on a three visits per week schedule for severe pain in Claimant's lower back.
2. On July 29, 2002, Claimant underwent an MRI of the lumbar spine which revealed demonstrable pathology at multiple levels.
3. On August 20, 2002, A.J. Morris, M.D. examined Claimant, concluded that he had a decreased range of motion at the waist on flexion and extension and spasms of paravertebral

muscles L1-L4 bilaterally, right to left and recommended Claimant should continue chiropractic treatment with Respondent.

4. On September 19, 2002, Francisco J. Batlle, M.D. examined Claimant and concluded Claimant was a surgical candidate.
5. On October 22, 2002, Subhash Chander, M.D., the Commission Designated Doctor, evaluated Claimant and concluded Claimant had a lumbar sprain/strain and lumbar disc herniations/protrusions related to the compensable injury. Because Claimant had not reached Maximum Medical Improvement (MMI), Dr. Chander did not assign an impairment rating.
6. Dr. Batlle examined Claimant again on December 9, 2002, and recommended an evaluation for epidural steroid therapy.
7. On February 19, 2003, Dr. Batlle conducted a third examination of Claimant and noted Claimant's continued improvement in symptomology. Follow-up visits were to be scheduled on a "as-needed" basis and no prescriptions were written.
8. Dr. Batlle examined Claimant for a fourth time on May 16, 2003, and, because of continued symptomology, he recommended epidural steroid therapy.
9. Claimant underwent epidural steroid therapy during the late summer of 2003.
10. Claimant is not working as a result of a layoff by his employer.
11. Claimant experienced pain as a result of a compensable injury to the lumbar spine.
12. Relief from the level of pain does occur beginning in September of 2002.
13. Claimant's pain, on the one through ten scale, began at 9/10 (severe) and decreased to 4/10 (low-moderate).
14. Claimant did obtain some relief for his pain during the chiropractic treatments between August 26, 2002, and January 17, 2003.
15. Petitioner denied chiropractic treatments from August 26, 2002, through January 17, 2003, as not medically necessary.
16. The Texas Workers' Compensation Commission (Commission) acting through Ziroc, an Independent Review Organization (IRO), found that the chiropractic treatments provided by Respondent were medically necessary for the treatment of Claimant.
17. Petitioner timely requested a hearing before the State Office of Administrative Hearings (SOAH).
18. The hearing convened on November 10, 2003, with SOAH ALJ Howard S. Seitzman presiding. Petitioner appeared through its counsel, Charlotte Salter. Respondent appeared *pro se*. The hearing concluded and the record closed that same day.

19. The amount in dispute is \$16,605.00, plus any applicable interest.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).
6. The chiropractic treatments provided by Respondent to Claimant from August 26, 2002, through January 17, 2003, were medically necessary.
7. Petitioner is liable for reimbursing Petitioner \$16,605.00, plus any applicable interest.

ORDER

THEREFORE IT IS ORDERED that Liberty Mutual Fire Insurance Company reimburse Josephat A. Okereke, D.C., the sum of \$16,605.00, plus any applicable interest, for charges associated with chiropractic treatments provide to injured worker ___ from August 26, 2002, through January 17, 2003.

SIGNED January 8, 2004.

**HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**