

**SOAH DOCKET NO. 453-04-2694.M5  
TWCC MR NO. M5-04-0282-01**

**TEXAS MUTUAL INSURANCE COMPANY,  
Petitioner** § **BEFORE THE STATE OFFICE**  
§  
§  
§  
V. § **OF**  
§  
§  
**METROPLEX DIAGNOSTICS,  
Respondent** § **ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

**I. INTRODUCTION**

Texas Mutual Insurance Company (Carrier) has appealed a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (TWCC). The decision concerned the Carrier's denial of Metroplex Diagnostics' (Provider's) request for reimbursement of medical services for (Claimant). The IRO found that the motor nerve conduction study (an "H" and "F" reflex study) was reasonably medically necessary to treat the Claimant's compensable injury.

The only disputed issue is whether the motor nerve conduction study was medically necessary for that purpose. Petitioner's evidence established that the motor nerve conduction study had no efficacy when performed only five days out from the date of injury because, for this type of injury, any physiological changes, and corresponding electrical changes, would happen several weeks after the injury. Provider did not appear at the hearing and consequently did not affirmatively present a case. As set out below, the Administrative Law Judge (ALJ) cannot find that it is and denies the request for reimbursement.

**II. FINDINGS OF FACT**

1. On \_\_\_, the Claimant sustained a work-related injury to his lower back as a result of his work activities.
2. On the date of injury, the Claimant's employer was the Quality Container Maintenance, and the Carrier was its workers' compensation insurance carrier.
3. On April 2, 2003, a nerve conduction study (an "H" and "F" reflex study) was conducted to determine whether Claimant suffered any nerve damage from the at-work injury just five days before.
4. The nerve conduction study provided to Claimant just five days from this type of back injury was not medically necessary. An injury of this type to nerves would not show up on a nerve conduction study because the physical characteristics and changes to the nerve, that would ultimately result in changed electrical conductivity that the nerve conduction study is designed to measure, would not manifest themselves within five days. Consequently, it would have no diagnostic or any of type of medical value.

5. On September 30, 2004, ALJ Bill Zukaukas, granted a continuance to accommodate Respondent's last-minute request and reset the matter for October 7, 2004, at 1:30 p.m.
6. On October 7, 2004, SOAH ALJ Bill Zukaukas held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
7. The Carrier appeared at the hearing through its attorney, R. Scott Placek.
8. The Provider failed to appear at the hearing (and failed to be available by telephone at phone number 214-914-3599 shortly after 1:30 p.m. on October 7, 2004), but did call the ALJ about an hour after the hearing wondering why he had not been connected.
9. The Provider filed a post-hearing motion, but failed to state an adequate reason for not attending the hearing or being available by phone. That motion is hereby DENIED.

#### **IV. CONCLUSIONS OF LAW**

1. 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. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and TEX. GOV'T CODE ANN. § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2004), and 28 TAC §§ 133.308(v) and 148.21(h) (2004), the Provider has the burden of proof in this case.
4. 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 that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LABOR CODE § 408.021 (a).
5. The evidence does not show that a nerve conduction study five days after Claimant's injury was medically necessary.
6. Carrier should not reimburse Provider for the nerve conduction study performed on Claimant on April 2, 2003.

**ORDER**

**IT IS ORDERED THAT** the Provider's request for reimbursement of the prescribed nerve conduction study for the Claimant is DENIED.

**SIGNED December 8, 2004.**

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**BILL ZUKAUCKAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**