

**SOAH DOCKET NO. 453-04-3741.M5
TWCC MR NO. M5-04-0251-01**

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| VONO, | · | BEFORE THE STATE OFFICE |
| Petitioner | · | |
| | · | |
| V. | · | |
| | · | OF |
| INSURANCE COMPANY FOR THE | · | |
| STATE OF PENNSYLVANIA, | · | |
| Respondent | · | ADMINISTRATIVE HEARINGS |

DECISION AND ORDER

VONO (Petitioner) appealed the findings and decision of the Texas Workers' Compensation Commission's designee, an independent review organization (IRO), which found that prescriptions that Petitioner provided a workers' compensation claimant (Claimant) were not medically necessary healthcare. The IRO's decision upheld a denial of reimbursement by the Insurance Company of the State of Pennsylvania (Carrier or Respondent). This decision and order finds the prescriptions were not medically necessary for Claimant.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Those issues are set out only in the Findings of Fact and Conclusions of Law below.

The hearing in this matter convened and the record closed August 10, 2004, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Ann Landeros. Petitioner was represented by its president, Nicky Otts. Attorney Steven Tipton represented Respondent. The Commission Staff did not participate in the hearing.

II. DISCUSSION

A. Factual Background

Claimant sustained a compensable injury to her ankle in _____. At the time of the injury, Carrier was the workers' compensation insurer for Claimant's employer. In 2002, Claimant's

treating physician, Bill Weldon, D.O., prescribed Carisoprodol, Lortab, and Ibuprofen to her. These prescriptions were filled at Petitioner's pharmacy.

Carrier denied payment for the prescriptions filled between October 16, 2002, and January 14, 2003, based on the lack of medical necessity. The IRO upheld Carrier's denial on the grounds that the records submitted did not document clinical findings supporting the use of the drugs.

Petitioner timely appealed the denial.

B. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) ' ' 148.21(h) and (i); 1 TAC ' 155.41. Pursuant to the Texas Worker's Compensation Act (Act), an employee who has sustained 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 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. LAB. CODE ANN. ' 408.021(a). Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. ' 401.011(19)(A). The IRO was authorized to hear the medical dispute pursuant to 28 TAC ' 133.308.

C. Evidence and Argument

Both Petitioner and Carrier proffered the records they submitted to the IRO. (Exs. 1 and 2). The only testimony presented was from Carrier's expert witness, orthopedic surgeon Daniel Foster, M.D.

Petitioner relied on Dr. Weldon's Letter of Medical Necessity, which stated:

. . . [Claimant] has internal derangement of the right ankle including multiple bone chips from the navicular bone. [Her] current diagnosis includes internal derangement of the right ankle. [She] continues to experience pain and rigidity in her right ankle as a result of these injuries . . . [She] does suffer from increasing amounts of pain

secondary to activities . . . [and] does require medications in order to relieve the pain and rigidity in her ankle so she may continue to work and [sic] daily activities. [She] is prescribed Carisoprodol, 350 mg, taken one every six hours as needed for severe muscle spasms and muscle tension. She is prescribed Lortab, 7.5 mg, taken one every six hours as needed for pain. . . [and] Ibuprofen, 800 mg, taken one three times [sic] daily with food for inflammation. (Ex. 1, p.1).

Dr. Foster testified that he examined Claimant in April 2003, and found no objective evidence of muscle spasms, inflammation, or chronic pain in Claimant's ankle despite her complaints of constant pain in the foot and ankle. Claimant told Dr. Foster that her pain was an 8 out of 10, made worse when standing for long periods, climbing, or stepping. (Ex. 2, p. 2). Dr. Foster tested Claimant's muscle strength in the ankle and toes, all of which were normal. He stated there was no objective evidence to support the medical necessity of Claimant's prescriptions. In fact, he found that the risks of taking highly addictive pain relievers such Carisoprodol and Lortab outweighed any benefits. In his opinion, the relevant, peer-reviewed medical literature recommends against the use opiates such as Carisoprodol and Lortab. Being highly addictive, opiates are not considered suitable for treatment of chronic pain.

D. Analysis

Petitioner failed to meet its burden of proof. Dr. Weldon's letter contained only conclusory statements that the prescriptions were necessary. The letter did not cite to any objective diagnostics that supported his conclusion that Claimant suffers from inflammation, pain, or muscle spasms in her ankle. Without some citation to supporting diagnostics or other documentation, Dr. Weldon's conclusory statements were insufficient to prove by a preponderance of the evidence that the prescriptions were medically necessary for Claimant.

Not only did Petitioner fail to meet its burden of proof, but Carrier's evidence also affirmatively established that the prescriptions for opiates were not medically necessary for Claimant. Even if Claimant had the level of chronic pain of which she complained, Dr. Foster gave credible evidence that Carisoprodol and Lortab are unsuitable for treatment of chronic pain. As Dr. Foster testified, the addictive properties of those drugs render them unsuitable for anything other than acute pain or pain derived from malignancies.

Petitioner failed to establish that prescriptions provided Claimant were medically necessary healthcare, and it is not entitled to reimbursement from Carrier for those drugs.

III. FINDINGS OF FACT

1. In _____, Claimant sustained an injury to her ankle compensable under the Texas Workers' Compensation Act (Act).
2. At the time of the compensable injury, Claimant's employer had workers' compensation insurance coverage with the Insurance Company of the State of Pennsylvania (Carrier or Respondent).
3. Claimant's treating physician, Bill Weldon, D.O., prescribed Carisoprodol, Lortab, and Ibuprofen for her ankle pain.
4. VONO (Petitioner) filled Claimant's drug prescriptions from October 16, 2002, through January 14, 2003.
5. Carrier denied reimbursement to Petitioner for the prescriptions based on the lack of medical necessity.
6. Petitioner's appeal of the denial was considered by the Commission's Independent Review Organization (IRO).
7. The IRO's decision upheld Carrier's denial of reimbursement on the basis that the prescriptions were not medically necessary. Petitioner timely appealed that decision.
8. The Commission's notice of hearing stated the date, time, and location of the hearing and cited to the legal statutes and rules involved along with a short, plain statement of the factual matters involved.
9. Petitioner and Respondent were represented at the hearing but the Commission Staff chose not to participate.
10. The prescriptions were to treat Claimant's complaints of chronic pain and inflammation in her ankle.
11. Carisoprodol and Lortab are opiate drugs that are highly addictive and not suitable for treatment of chronic pain.
12. Petitioner failed to adequately document Claimant had chronic pain or inflammation in her ankle.
13. Carisoprodol, Lortab, and Ibuprofen were not medically necessary for Claimant's compensable injury from October 16, 2002, through January 14, 2003.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction over this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LAB. CODE ANN. ' 413.031.
2. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to ' 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. The IRO was authorized to hear the medical dispute pursuant to 28 TEX. ADMIN. CODE (TAC) § 133.308.
4. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TAC ' 133.308(u).
5. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. ' ' 2001.051 and 2001.052.
6. Petitioner had the burden of proof in this proceeding. 28 TAC ' ' 148.21(h) and (i); 1 TAC ' 155.41.
7. Pursuant to the Act, an employee who has sustained 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 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. LAB. CODE ANN. ' 408.021(a).
8. Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. ' 401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. ' 401.011(31).
9. Petitioner is not entitled to reimbursement for the Carisoprodol, Lortab, or Ibuprofen it dispensed to Claimant from October 16, 2002, through January 14, 2003.

ORDER

It is ORDERED that VONO is not entitled to reimbursement by the Insurance Company of the State of Pennsylvania for the Carisoprodol, Lortab, or Ibuprofen it dispensed to Claimant from October 16, 2002, through January 14, 2003.

SIGNED August 20, 2004.

**ANN LANDEROS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**