

**SOAH DOCKET NO. 453-04-7293.M5
MRD CASE NO. M2-04-2663-01**

— ¹ Petitioner	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
VS.		
VALLEY FORGE INSURANCE COMPANY		

DECISION AND ORDER

I. INTRODUCTION

— (Claimant) requested a hearing to contest a decision by the Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD) to dismiss his request for medical dispute resolution based on its conclusion that claims for his disputed medical bills had not been submitted to Valley Forge Insurance Company (Carrier) for reconsideration in accordance with Commission rules. The Carrier submitted a motion for summary disposition based on its assertion that the Claimant failed to follow Commission rules for requesting medical dispute resolution because it failed to submit evidence of the Carrier's adverse determinations or, alternatively, convincing evidence that the Carrier received the Claimant's claims. This decision agrees with the Carrier's argument and grants its motion without prejudice to the Claimant's re-filing his request.²

II. PROCEDURAL HISTORY

A hearing convened on December 21, 2004, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings, Fourth Floor, William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. The Carrier appeared through its attorney, Shelley Gatlin. The Claimant appeared *pro se*.

Because there were no contested issues concerning notice or jurisdiction, those matters are addressed in the fact findings and legal conclusions without further discussion here.

¹ The Claimant's initials are used for confidentiality purposes.

² This decision makes no comment on any time limitation that could be applicable to re-filing a request for medical dispute resolution.

III. DISCUSSION

1. Legal Standards

Under TEX. LAB. CODE ANN. § 408.021(a)(1-3),

(a) 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.

"Health care," under TEX. LAB. CODE ANN. § 401.011(19), includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

The Carrier had the burden of proof on its motion for summary disposition. 1 TEX. ADMIN. CODE (TAC) § 155.57.

The Commission cited 28 TAC § 133.308(f) and (i) as the basis of its decision. Paragraphs (2) and (3) of subsection (f) require a dispute for medical dispute resolution to include:

- (2) Written notices of adverse determinations (both initial and reconsideration) of prospective or retrospective necessity disputes, if in the possession of the requestor, [and]
- (3) Documentation of the request for and response to reconsideration, or, if the respondent failed to respond to a request for reconsideration, convincing evidence of carrier receipt of that request;

Relevant portions of Rule 133.308(i) include:

(i) Dismissal. A dismissal does not constitute a decision. The commission may dismiss a request for medical necessity dispute resolution if:

...

- (3) The commission determines that the medical bills in the dispute have not been properly submitted to the carrier for reconsideration pursuant to § 133.304;

...

(7) The request for medical dispute resolution does not contain all the components required by the TWCC-60 form and by subsection (e) or (f) of this

section. The requestor may amend and resubmit the request to include all the required components as long as the amended request is filed within the timeframes required by subsection (d) of this section

Another rule that could apply to this case is in 28 TAC § 133.307(f)(3), which requires that a request for medical dispute resolution include:

- (3) A copy of any EOB relevant to the dispute, or, if no EOB was received, convincing evidence of carrier receipt of employee request for reimbursement.³

B. Discussion

The Carrier introduced into evidence the documents contained in the Claimant's medical dispute resolution request. There were no documents showing an adverse determination of the claim by the Carrier either initially or upon request for reconsideration. There was also no evidence that the Carrier did not respond to the claim or that it received the request. The Carrier also submitted the MRD decision, which concluded that the medical bills in dispute had not been properly submitted to the Carrier.

The Claimant testified that he did everything a Commission representative asked him to do. However, he does not know what documents he sent to the Commission.⁴ He testified and submitted a letter from him to the Commission dated March 23, 2994, in which he said a representative of the Carrier told him that all his coverage was denied and he should have never had a back operation.

The ALJ concludes the evidence shows the Claimant did not comply with the Commission's rules in requesting medical dispute resolution by submitting: evidence of adverse determinations by the Carrier, either initially or on reconsideration; evidence that the Carrier responded to the Claimant's claim; or convincing evidence that the Carrier received the claim. Because of that, the MRD was correct in dismissing the Claimant's request for medical dispute resolution. As a result, this case should also be dismissed from the State Office of Administrative Hearings. However, in accordance with Rule 133.308(i)(7), this dismissal should be without prejudice to the Claimant's re-

³ There was an issue as to whether Rule 133.308 or Rule 133.307 applies to this case. Rule 133.308(a) says the rule applies to an independent review of prospective or retrospective medical necessity. Rule 133.307(a) says that rule applies to a request for medical dispute resolution of a medical fee dispute and that a medical fee dispute does not include medical necessity issues. Because there are no EOBs in evidence, the Carrier's grounds for denial (whether medical necessity or some other ground) are not in evidence. In this case, the MRD dismissed the case without deciding the underlying medical necessity issue. The issue of which rule applies is not determinative of the outcome, however, because Rule 133.307(f)(3) contains substantially similar requirements to those contained in Rule 133.308(f)(2) and (3).

⁴ He said an attorney friend submitted the documentation for him.

filing his request for medical dispute resolution.

IV. FINDINGS OF FACT

1. ___ (Claimant) requested a hearing to contest a decision by the Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD) dismissing his request for medical dispute resolution based on its conclusion that claims for disputed medical bills had not been submitted to his employer's workers' compensation insurance carrier, Valley Forge Insurance Company (Carrier), for reconsideration in accordance with Commission rules.
2. The Carrier submitted a motion for summary disposition based on its assertion that the Claimant failed to follow Commission rules for requesting medical dispute resolution because it failed to submit evidence of the Carrier's adverse determinations, both initially and after a request for reconsideration, or, alternatively, convincing evidence that the Carrier received the Claimant's requests.
3. In his request for medical dispute resolution, the Claimant did not submit evidence of adverse determinations by the Carrier, either initially or on reconsideration; evidence that the Carrier responded to the Claimant's claim; or convincing evidence that the Carrier received the claim.
4. It was undisputed that the Claimant requested a hearing within 20 days of receiving notice of the MRD decision.
5. 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.
6. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

III. 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. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
2. Notice of the hearing was proper and timely. TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
3. The Carrier had the burden of proof on its motion for summary disposition. 1 TEX. ADMIN. CODE (TAC) § 155.57.
4. The Carrier's motion for summary disposition should be granted. 1 TAC § 155.57; 28 TAC § 133.308(f) and (i).

ORDER

IT IS THEREFORE ORDERED that Valley Forge Insurance Company's Motion for Summary Disposition be, and the same, is hereby, granted without prejudice.

IT IS ORDERED FURTHER that this case, be, and the same is hereby, dismissed from the State Office of Administrative Hearings docket.

Signed January 13, 2005.

**JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**