

**SOAH DOCKET NO. 453-05-9252.M5
MDR NO.M5-05-2434-01**

**B. MISRA, M.D.,
Petitioner**

V.

**ZURICH AMERICAN INSURANCE
COMPANY,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

Dr. B. Misra, M.D. (Provider) disputes a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (TWCC)/Medical Review Division (MRD) regarding office visits of Claimant, ___from July 14, 2004, through January 3, 2005. As set out below, the Administrative Law Judge (ALJ) agrees with the findings of the IRO/MRD that the office visits were not medically necessary. Because Provider failed to meet his burden of proving the visits were medically necessary, Carrier should not be required to reimburse Provider for these visits.

II. FINDINGS OF FACT

1. On___, the Claimant sustained a work-related injury to his right cervical area and shoulder girdle region when he turned his head suddenly while driving a piece of heavy equipment (compensable injury).
On the date of injury, the Carrier was the workers' compensation insurance carrier for the Claimant's employer
3. As a result of the compensable injury, the Claimant suffered a neck sprain or strain.
4. Claimant was treated by Dr. B. Misra (Provider) for pain associated with the sprain/strain. From July 14, 2004, through January 3, 2005, Provider saw Claimant during nine office visits. Although the notes from the office visits are difficult to read, it appears that Provider primarily assessed Claimant's condition at each visit and prescribed pain medications for Claimant's ongoing pain.

5. On April 6, 2004, Dr. Gerald Hill performed a required medical examination of Claimant. He observed that an MRI of Claimant's cervical area taken on September 22, 2003, showed a mild broad disk protrusion at C5-6, with some bulging and hypertrophic spurring at C6-7 on Claimant's right side. An EMG study on November 14, 2003, was negative for radiculopathy. Dr. Hill concluded that Claimant's pain symptoms were likely to continue for a while, but did not require specific medical treatment.
6. Dr. Keith McAlpin performed a functional capacity evaluation (FCE) of Claimant on April 14, 2004, which indicated that Claimant could return to work at a medium capacity with an occasional lifting limit of 30 pounds and limitations on the amount of overhead reaching and pushing/pulling.
7. Dr. Peter Robinson certified Claimant as reaching maximum medical improvement as of May 28, 2004. He assigned a 0% whole person impairment rating.
8. Dr. Gregg Vagner performed two peer reviews of the treatment in this case. He concluded that the MRI indicated the presence of only minimal disc bulges with largely degenerative changes and that Claimant did not suffer any damage to the physical structure of the body as a result of his compensable injury.
9. Provider testified that Claimant continued to experience pain and needed treatment. However, Provider did not provide an explanation for continued treatment that was based upon objective medical findings. Further, he did not rebut the opinions of other medical experts that Claimant's pain was due to degenerative changes.
10. The Provider sought reimbursement from the Carrier for the disputed office visits.
11. The Carrier denied the requested reimbursement on the basis that the services provided were not medically necessary.
12. The Provider filed a request for medical dispute resolution with the TWCC.
13. The IRO reviewed the medical dispute and found that the office visits were not medically necessary.
14. The TWCC's Medical Review Division (MRD) adopted the IRO's findings.
15. The Provider asked for a contested-case hearing before a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
16. This case was referred by TWCC and accepted by SOAH prior to September 1, 2005, for hearing.
17. Required notice of a contested-case hearing concerning the dispute was mailed to the Carrier, the Provider, and the Claimant.

18. On February 16, 2006, SOAH ALJ Suzanne Formby Marshall 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. The Carrier appeared at the hearing through its attorney, Steve Tipton. The Provider appeared by telephone.

III. CONCLUSIONS OF LAW

1. The State Officer of Administrative Hearings (SOAH) 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) (West 2005), TEX. GOV' T CODE ANN. (Gov' t Code) ch. 2003 (West 2005), and Acts 2005, 79th Leg., ch. 265, § 8.013, eff. Sept. 1, 2005.
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 Gov' t Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2005), and 28 TAC § 148.14 (2005), Petitioner 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. Labor Code § 408.021 (a).
5. The medical records and testimony do not support the need for Claimant' s office visits during the relevant time period.
6. Based on the above Findings of Fact and Conclusions of Law, Provider failed to meet its burden of proving that the office visits from July 14, 2004, through January 3, 2005, were medically necessary.

ORDER

IT IS ORDERED THAT Zurich American Insurance Company shall not reimburse Dr. B. Misra for the office visits from July 14, 2004, through January 3, 2005.

SIGNED April 17th, 2006.

**SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**