

SOAH DOCKET NO. 454-06-0250.P1

TOKIO MARINE AND FIRE INSURANCE	§	BEFORE THE STATE OFFICE
CO., LTD.,	§	
Petitioner	§	
v.	§	OF
	§	
TEXAS DEPARTMENT OF INSURANCE,	§	
DIVISION OF WORKERS'	§	ADMINISTRATIVE HEARINGS
COMPENSATION and	§	
JAMES W. LUNDIN, D.C.,	§	
Respondents	§	
	§	

SUMMARY DISPOSITION DECISION AND ORDER

On November 9, 2006, Tokio Marine and Fire Insurance Company, Ltd. (Carrier) filed a Motion for Summary Disposition (Motion), challenging a medical interlocutory order (MIO) issued by the Texas Workers' Compensation Commission, now the Texas Department of Insurance, Division of Workers' Compensation (Division), requiring Carrier to reimburse James W. Lundin, D.C., for one office visit every 30 days for three months and for medications – Lortab, Vioxx, and Effexor – to treat (Claimant). Neither the Division nor Dr. Lundin responded to the Motion. The Administrative Law Judge grants the Motion.

Claimant sustained a compensable hernia injury on (). That hernia was repaired, and Claimant recovered from that injury. Claimant later suffered from a second hernia as well as a herniated disc at level L4-5 of the lumbar spine. Byron E. Strain, M.D., performed a prospective review medical examination pursuant to 28 TEX. ADMIN. CODE § 134.650. Dr. Strain examined Claimant on or about July 19, 2005, and issued a report providing for one office visit every 30 days and the medications (Lortab, Vioxx, and Effexor) to treat Claimant's work-related injury. The Division issued an MIO requiring payment for the office visits and medications. Carrier appealed

the MIO but paid for the office visits and medications as required under 28 TEX. ADMIN. CODE § 134.650.¹

On July 21, 2005, a Division hearing officer determined that there was no causal connection between the compensable injury of [REDACTED], and Claimant's second hernia and herniated disc. That decision has now become final. Accordingly, the office visits and medications ordered to be paid by the MIO were not medically necessary to treat the compensable injury.

I. FINDINGS OF FACT

1. On [REDACTED] (Claimant) suffered a hernia injury (compensable injury) while pushing a heavy cart with a bad wheel.
2. On the date of injury, Tokio Marine and Fire Insurance Company, Ltd. (Carrier) was the workers' compensation insurance carrier for Claimant's employer.
3. Claimant later suffered from a second hernia and a herniated disc at level L4-5 of the lumbar spine.
4. Byron E. Strain, M.D., performed a prospective review medical examination pursuant to 28 TEX. ADMIN. CODE § 134.650.
5. Dr. Strain examined Claimant on or about July 19, 2005, and issued a report providing for one office visit every 30 days and medications (Lortab, Vioxx, and Effexor) to treat Claimant's work-related injury.
6. Texas Workers, Compensation Commission, now the Texas Department of Insurance, Division of Workers' Compensation (Division), issued an medical interlocutory order (MIO) requiring payment for the office visits and medications.
7. Carrier appealed the MIO but paid for the office visits and medications as required under 28 TEX. ADMIN. CODE § 134.650.

¹ Carrier will seek reimbursement for overpayments from the Subsequent Injury Fund.

8. On July 21, 2005, a Division hearing officer determined that there was no causal connection between the compensable injury of _____, and Claimant's second hernia and herniated disc. That decision has now become final.
9. On November 9, 2006, Carrier filed a Motion for Summary Disposition (Motion), challenging the MIO issued by the Division requiring Carrier to reimburse James W. Lundin, D.C., for one office visit every 30 days for three months and for medications – Lortab, Vioxx, and Effexor.
10. Neither the Division nor Dr. Lundin responded to the Motion.

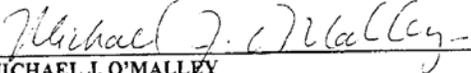
II. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§402.073(b) and 413.055 and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. Carrier has the burden of proof in this proceeding. TEX. LAB. CODE ANN. §413.055; and 28 TEX. ADMIN. CODE §148.14(a).
4. The Lortab, Vioxx, and Effexor and office visits were not medically necessary to treat the Claimant's compensable injury. TEX. LAB. CODE ANN. §408.021.
5. Summary disposition is appropriate in this case because, as a matter of law, neither the Division nor Dr. Lundin can show that Lortab, Vioxx, and Effexor and office visits were medically necessary to treat Claimant's compensable injury.

ORDER

IT IS THEREFORE ORDERED that Lortab, Vioxx, and Effexor and office visits were not reasonably required by the nature of the Claimant's injury and that Tokio Marine and Fire Insurance Company, Ltd. is eligible for reimbursement for payments for those medications and office visits.

SIGNED January 25, 2007.


MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS