

SOAH DOCKET NO. 454-06-0308.P1
DWC NO.

BENCHMARK INSURANCE COMPANY,	§	BEFORE THE STATE OFFICE
	§	
V.	§	
	§	
TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION, AND TIMOTHY LAMBERT, D.C.	§	OF
	§	
	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

Benchmark Insurance Company (Carrier) requested a hearing to contest a medical interlocutory order issued by the Texas Department of Insurance, Division of Workers' Compensation (Division) regarding medical services for (Claimant). Timothy Lambert, D.C., requested certain treatments for Claimant, and Carrier denied the medical necessity of such treatments. The dispute was referred to an independent doctor for a Prospective Review Medical Examination (PRME). The PRME doctor found that the requested treatments were reasonably medically necessary to treat the Claimant's compensable injury, and the Division ordered Carrier liable for reimbursing for the services.

A hearing was conducted at which it was established that the only dispute in this case is whether the requested treatments were reasonably necessary to treat the Claimant's compensable injury. After considering the evidence and arguments presented, the undersigned Administrative Law Judge (ALJ) concludes that Carrier has failed to show that the treatments in issue were not medically necessary for Claimant. Therefore, because Carrier has not met its burden of proof, the ALJ upholds the interlocutory order requiring Carrier to reimburse for the treatments.

II. DISCUSSION AND ANALYSIS

This case involves a compensable injury to Claimant that occurred in . . . , when Claimant wrenched his knee getting out of a vehicle at his place of employment—a car wash. Claimant began receiving physical therapy and related treatment from Dr. Lambert in August 2004. In December 2004, Claimant had arthroscopy on his right knee. Thereafter, he underwent approximately 13 weeks of physical therapy and also six weeks of work hardening, all of which was provided by Dr. Lambert.

On May 24, 2005, Dr. Lambert performed a functional capacity examination (FCE) on Claimant and determined that “[h]e has improved with his functional abilities to a medium duty category and should be able to maintain employment with little difficulty. The patient is released from active care, he is urged to call if he suffers with exacerbation of pain, any swelling or locking of the knee. He has reached MMI with an 8% impairment rating.”¹ On June 13, 2005, Claimant was examined by Hugh Ratliff, M.D. At that time, Dr. Ratliff found that Claimant’s injury had resolved and that he did not need any further treatment for his compensable injury. Dr. Ratliff did note, however, that Claimant had “residual chondromalacia of the medial femoral condyle for which he will have exacerbations and remissions of symptoms, but they are not caused by the injury and is [sic] a disease of life.”²

On July 1, 2005, Claimant returned to Dr. Lambert complaining of pain and swelling in his right knee, which Claimant attributed to extensive walking and stair-climbing during a recent trip to New York City. Dr. Lambert questioned Claimant to determine whether there was a specific incident that had caused the pain and swelling, but Claimant was unable to identify any specific incident occurring at a definite time and place that might have caused his symptoms. Dr. Lambert did not provide any initial treatment for Claimant at that time, but wanted to wait and see if the symptoms would resolve without intervention.

¹ Carrier Ex. 1, at 313.

² Carrier Ex. 1, at 323.

When Claimant still had pain and swelling a week later, Dr. Lambert requested approval for three office visits per week, for three weeks, to perform: (1) electrical stimulation (one unit three times per week, for three weeks); (2) neuromuscular reeducation (one unit three times per week for three weeks); and (3) myofascial release (one unit three times per week for three weeks). The Carrier denied the treatment, and Dr. Lambert requested PRME. The Division referred the matter to a PRME doctor, who found the treatment to be medically reasonably necessary for Claimant's compensable injury. Carrier then requested a hearing on the matter, and the case was referred to the State Office of Administrative Hearings.

At the hearing, Carrier presented the testimony of William Defoyd, D.C., who reviewed the medical records related to Claimant and determined that his pain and swelling in July 2005 were not related to his compensable injury, but rather were symptomatic of a new injury. In reaching this conclusion, Dr. Defoyd noted that, in May and June of 2005, Claimant reported virtually no significant pain and no loss of functioning of his right knee and was able to return to work as a physical education instructor. Based on this, Dr. Defoyd concluded that Claimant was fully healed from his compensable injury. Thus, when Claimant presented to Dr. Lambert in July 2005 with pain and swelling, Dr. Defoyd opines this must have been a new injury because Claimant's compensable injury had shown itself fully healed in May and June 2005. Dr. Defoyd indicated this is consistent with Claimant's pre-existing condition of residual chondromalacia, which existed prior to his compensable injury and which will likely cause Claimant ongoing knee problems throughout his life.

In contrast, the Division presented the testimony of the treating physician, Dr. Lambert, who testified that Claimant's pain and swelling in July 2005 was a recurrence of his compensable injury, resulting from the increased use of Claimant's knee in New York City. Dr. Lambert testified that he questioned Claimant at length to determine whether there was any specific incident that might have caused the pain and swelling, but Claimant could not identify any specific cause of his symptoms. Dr. Lambert noted that climbing stairs and significant walking would be hard on Claimant's knee and would be a likely cause of exacerbation of his compensable injury.

Dr. Lambert testified that he saw Claimant three more times after obtaining the PRME approval and that Claimant's condition improved and he was able to return to work again. Dr. Lambert has not seen Claimant again since then, and he opined that was an indication that Claimant's condition had improved. He testified that he has seen Claimant in a non-treating context in the community and it did not appear that Claimant continued to suffer ongoing limitations from his compensable injury.

After considering the evidence presented, the ALJ concludes that Carrier has failed to show that the treatments in issue were not reasonably medically necessary for Claimant's compensable injury. Carrier's primary argument rests upon its assertion that the pain and swelling reported on July 1, 2005, were unrelated to Claimant's compensable injury, but rather reflected a new injury. However, the ALJ finds the preponderant evidence does not establish Carrier's assertion.

Carrier places much emphasis on Claimant's own statements during his FCE on May 24, 2005. Although Claimant's statements tend to indicate he had no significant pain or limitations at that time, he also stated his "pain fluctuates but overall is definitely getting better."³ This statement shows Claimant still had some ongoing pain and indicates a perception by Claimant that he was not completely healed. Further, Dr. Lambert noted in his report at that time that the chief complaints for Claimant were that he had "[k]nee pain that increases with activity or prolonged sitting, standing or walking."⁴ This also tends to show that Claimant's symptoms were not entirely resolved at that time. To the extent Carrier contends Dr. Lambert's statements are not consistent with some of the statements attributed to Claimant in the report, it was incumbent on Carrier (as the party with the burden of proof) to show which was more reliable. Carrier did not do this, as there was no testimony from Claimant or anyone else verifying the accuracy of Claimant's statements in the report.⁵

³ Carrier Ex. 1, at 316.

⁴ Carrier Ex. 1, at 312.

⁵ In situations where there is an unresolved conflict in evidence, this generally is more detrimental to the party with the burden of proof.

Similarly, the IME report prepared by Dr. Ratliff has information supporting different views of Claimant's condition. On one hand, Dr. Ratliff noted that Claimant was not experiencing pain at that time. On the other hand, Claimant indicated that he "still has to be careful, but he is able to squat and kneel and get on the floor and take care of children, but he uses a stool to help avoid sitting or squatting any more than necessary."⁶ This shows that, although Claimant may not have been experiencing pain, he still had to watch his movements so as not to aggravate his condition. This appears to support the contention by Dr. Lambert that Claimant's pain and swelling in July 2005 was essentially a flare-up of his compensable injury, brought on by his overuse of his knee during his trip to New York City.

So, the evidence in the record shows that (1) Claimant was still experiencing some pain on 5; (2) Claimant engaged in increased walking and climbing of stairs during a trip to New York City in June 2005; (3) there was no specific incident that resulted in a new injury to Claimant between 7 and 7 (4) Claimant's pain and swelling were consistent with the nature of his compensable injury of 7 and (5) Claimant's condition improved with only three additional visits to Dr. Lambert after July 7. In light of these facts, and without more persuasive evidence from Carrier showing that Claimant actually suffered a new injury, the ALJ finds that Carrier has not carried its burden of proof in this case to show that the treatments in issue were not reasonably medically necessary for Claimant's compensable injury.⁷ In support of this decision, the ALJ makes the following findings of fact and conclusions of law.

⁶ Carrier Ex. 1, at 321.

⁷ Carrier made some additional ancillary arguments regarding both the type of treatment requested and Claimant's pre-existing condition, which the ALJ finds lacking in merit. When questioned, Carrier's expert provided little in the way of viable alternatives to the type of additional treatment requested by Dr. Lambert. Further, as to Claimant's prior knee problems, the ALJ notes that Claimant's last knee surgery was in 1980—nearly 30 years ago. As such, the ALJ finds that Claimant's pre-existing knee problems were not shown to be the likely cause of his exacerbation in June 2005, just one month after concluding his treatment for his compensable injury.

III. FINDINGS OF FACT

1. On _____, Claimant suffered a compensable injury when he wrenched his knee getting out of a vehicle at his place of employment, a car wash.
2. On the date of his injury, Benchmark Insurance Company (Carrier) was the workers' compensation insurance carrier for Claimant's employer.
3. Claimant began receiving physical therapy and related treatment from Timothy Lambert, D.C., in August 2004.
4. In December 2004, Claimant had arthroscopy on his right knee.
5. After his surgery, Claimant underwent approximately 13 weeks of physical therapy and also six weeks of work hardening, all of which were provided by Dr. Lambert.
6. On May 24, 2005, Dr. Lambert performed a functional capacity examination (FCE) on Claimant and determined that Claimant had improved his functional abilities to a medium duty category and should be able to maintain employment with little difficulty. At that time, Dr. Lambert found that Claimant had reached maximum medical improvement with an 8% impairment rating.
7. As of May 24, 2005, Claimant still had some fluctuating pain from his compensable injury.
8. Claimant was released from active care by Dr. Lambert on May 24, 2005, and was urged to return to Dr. Lambert if he suffered an exacerbation of pain, any swelling or locking of the knee.
9. Claimant engaged in increased walking and climbing of stairs during a trip to New York City in June 2005.
10. There was no specific incident that resulted in a new injury to Claimant between _____ and _____.
11. On July 1, 2005, Claimant returned to Dr. Lambert complaining of pain and swelling in his right knee.
12. Claimant's pain and swelling were consistent with the nature of his compensable injury of _____.

13. On July 12, 2005, Dr. Lambert requested a prospective review of medical care not requiring preauthorization, seeking approval for three office visits per week, for three weeks, to perform: (1) electrical stimulation (one unit three times per week, for three weeks); (2) neuromuscular reeducation (one unit three times per week for three weeks); and (3) myofascial release (one unit three times per week for three weeks).
14. Claimant's condition improved with only three additional visits to Dr. Lambert after July 1, 2005.
15. The Texas Department of Insurance, Division of Workers' Compensation (Division) assigned the matter to a PRME doctor in accordance with 28 TEX. ADMIN. CODE §134.650.
16. On August 9, 2005, the PRME doctor issued a decision concluding that the proposed services were medically necessary to treat the compensable injury.
17. On August 29, 2005, the Division issued an interlocutory order, based on the PRME doctor's review and under the authority of TEX. LABOR CODE ANN. §413.055(a), requiring Carrier to reimburse for the proposed services.
18. On August 31, 2005, Carrier requested a hearing by the State Office of Administrative Hearings (SOAH) to appeal the interlocutory order.
19. On November 16, 2005, the Division sent its initial notice of the SOAH hearing in this matter to all parties.
20. All parties received adequate notice of not less than 10 days 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.
21. On March 7, 2007, SOAH Administrative Law Judge Craig R. Bennett held a contested case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Carrier appeared at the hearing through its attorney, Erin Hacker Shanley. Dr. Lambert appeared at the hearing by telephone. The Division appeared at the hearing through its attorney, E. Renee Crenshaw. The hearing concluded and the record closed that same day.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. §§ 402.073(b) and 413.055(c) 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. 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. LAB. CODE ANN. § 408.021(a).
4. Carrier has the burden of proving by a preponderance of the evidence that the proposed services are not reasonably medically necessary to treat Claimant's compensable injury. 1 TEX. ADMIN. CODE § 155.41(b); 28 TEX. ADMIN. CODE § 148.14(a).
5. Based on the above Findings of Fact and Conclusions of Law, Carrier has failed to show that the treatments in issue—three office visits per week, for three weeks, to perform electrical stimulation (one unit three times per week for three weeks); neuromuscular reeducation (one unit three times per week for three weeks); and myofascial release (one unit three times per week for three weeks)—were not medically necessary to treat Claimant's compensable injury.
6. Based on the above Findings of Fact and Conclusions of Law, the interlocutory order should be upheld.

ORDER

IT IS ORDERED THAT the Division's interlocutory order of August 29, 2005, in this matter is upheld.

SIGNED March 12, 2007.



CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS