

**SOAH DOCKET NO. 454-09-1034.M4
DWC MR NO. M4-06-7257-01**

CONTINENTAL CASUALTY COMPANY,
Petitioner

v.

ARLINGTON MEMORIAL HOSPITAL,
Respondent

§ **BEFORE THE STATE OFFICE**
§
§ **OF**
§
§
§ **ADMINISTRATIVE HEARINGS**
§

DECISION AND ORDER

I. INTRODUCTION

Continental Casualty Company (Petitioner or Continental) appealed the decision of the Medical Dispute Resolution Division of the Texas Department of Insurance, Division of Workers' Compensation (the Division) denying its request for a refund of a claim it paid to Arlington Memorial Hospital (Respondent or Arlington). The Division concluded that Continental waived its right to medical resolution because it did not request a refund from Arlington within the 45-day deadline in the Division's rules. The Administrative Law Judge (ALJ) finds that Continental did not waive its right to request a refund and that it is entitled to a refund because it submitted duplicate payments to Arlington.

II. PROCEDURAL HISTORY

Notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing for this case convened on December 1, 2008, at the State Office of Administrative Hearings, 300 W. 15th St., 4th Floor, Austin, Texas, before ALJ Travis Vickery. Attorney David L. Swanson represented Continental. Arlington did not appear at the hearing. A written closing argument was submitted by Continental and the record closed on December 8, 2008.

III. ARGUMENT AND ANALYSIS

On August 5, 2005, Continental received a bill in the amount of \$66,696.37 for dates of service from July 11 through July 15, 2005. The service involved a lumbar spine surgery and a four-day inpatient admission. Continental determined that Arlington was entitled to a reimbursement of

\$20,812.50 under the Inpatient Hospital Fee Guideline. Consistent with this determination, on September 9, 2005, Continental issued payment to Arlington in the amount of \$20,812.50. On November 1, 2005, Continental inadvertently issued a duplicate payment to Arlington in the amount of \$20,812.50.

On February 9, 2006, Continental requested a refund of the duplicate payment from Arlington. On April 4, 2006, Arlington responded by letter and refused to refund the duplicate payment. Continental then requested medical dispute resolution. Thereafter, Arlington refunded \$17,600.00 of the \$20,812.50 duplicate payment, leaving \$3,212.50 remaining. On October 14, 2008, the Division issued a decision finding that Continental is not entitled to a refund because its request was:

... greater than 45 days from the date of receipt of the completed bill. Per 28 Texas Administrative Code § 133.304 (a-b), the Requestor has 45 days to take final action on a medical bill, which includes requesting a refund. Per 28 Texas Administrative Code § 133.304 (a-b), the Requestor exceeded the 45 day timeframe to request a refund. Therefore, per 28 Texas Administrative Code § 133.304 (p), the Requestor is not eligible for a refund regarding the disputed dates of service.

The ALJ disagrees with the Division's decision. This matter has been addressed in prior dockets, which determined that Rule 133.304 (a) and (b) do not waive an insurer's right to refund if the refund request is not filed within 45 days.¹ The ALJ agrees with the rationale and interpretation of Rule 133.304 (a) and (b) as stated in those dockets.

Furthermore, Continental's duplicate payment cannot be properly characterized as a *final action* under Rule 133.304 (a) and (b). On September 9, 2005, Continental took final action on Arlington's bill, consistent with the Inpatient Hospital Fee Guidelines, by issuing an EOB denying some of the requested reimbursement and providing payment on the remainder. The second, duplicate payment was not intended as a *final action* under Rule 133.304 (a) and (b), it was simply a mistake.

Under Rule 133.304 (a) and (b), Continental is also entitled to take final action in the form of a payment as late as the 45th day. Under the Division's reading of the rule, if Continental exercised

¹ SOAH Docket No. 453-03-3621.M4, Order No. 5 (February 9, 2004); SOAH Docket No. 453-03-3686.M4,

its right to submit payment on day 45, but accidentally overpaid, it would lose its right to a refund by the mere passage of the 45th day. If the Division's interpretation is correct, Continental could accidentally cut a check for \$1,000,000 over the requested amount, and its right to a refund would be lost, even though it was in compliance with the rule requiring a final action within 45 days. The ALJ does not believe that such a result was the intent of the Labor Code.²

As reflected in the Findings of Fact and Conclusions of Law, this decision finds that Continental met its burden of proof to establish its right to a refund of \$3,212.50. The Division's decision that the refund request was untimely is overruled.

IV. FINDINGS OF FACT

1. On August 5, 2005, Continental Casualty Company (Continental) received a bill (Bill) from Arlington Memorial Hospital (Respondent or Arlington) in the amount of \$66,696.37 for dates of service from July 11 through July 15, 2005.
2. On September 9, 2005, Continental issued an Explanation of Review recommending that Arlington was entitled to a reimbursement of \$20,812.50.
3. On September 9, 2005, Continental issued payment to Arlington in the amount of \$20,812.50.
4. On November 1, 2005, Continental inadvertently issued a duplicate payment to Arlington in the amount of \$20,812.50.
5. By letter dated February 9, 2006, Continental informed Arlington that the November 1, 2005 payment was an inadvertent duplicate and requested a refund of the duplicate payment from Arlington.
6. On April 4, 2006, Arlington responded by letter and refused to refund the duplicate payment.
7. Continental filed a request for dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division) in which it requested that the Division order Arlington to refund the duplicate payment.
8. After Continental requested dispute resolution, Arlington refunded \$17,600.00 of the \$20,812.50 duplicate payment, which reduced Continental's refund request to \$3,212.50.

Order No. 8 (August 16, 2004).

² In fact, the rule in effect for this case was repealed and the new rule, effective November 3, 2005, specifically excluded the provision at issue here; 28 TAC § 133.304(b)(3). See, Petitioner's Ex. 1 at 23-32.

9. Continental informed the Division of Arlington's partial refund.
10. On October 14, 2008, the Division issued a decision finding that Continental is not entitled to a refund because its refund request was submitted more than 45 days after it received the Bill from Arlington.
11. Continental timely requested a contested case hearing.
12. Notice of the hearing was sent to the parties on November 5, 2008.
13. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
14. The hearing for this case convened on December 1, 2008, at the State Office of Administrative Hearings, 300 W. 15th St., 4th Floor, Austin, Texas. Attorney David L. Swanson represented Continental and the Respondent did not enter an appearance or participate in the hearing.
15. Continental filed post-hearing briefing and the record closed on December 8, 2008.

V. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. (Labor Code) § 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 TEX. LAB. CODE ANN. § 413.031 and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided to all parties in accordance with TEX. GOV'T CODE ANN. § 2001.052.
4. Continental had the burden of proof in this matter, pursuant to 28 TEX. ADMIN. CODE § 148.21(h).
5. Continental met its burden to establish its entitlement to a reimbursement in the amount of \$3,212.50.
6. The Labor Code does not require that Continental request a refund of an inadvertent overpayment within 45 days of receiving a complete medical bill from Arlington.
7. The Division's rules do not require that Continental request a refund of an inadvertent overpayment within 45 days of receiving a complete medical bill from Arlington.
8. Continental's September 9, 2005, payment to Arlington in the amount of \$20,812.50 was a final action.

9. Continental's November 1, 2005, payment to Arlington in the amount of \$20,812.50 was not a final action.
10. Continental did not waive its right to medical dispute resolution by not requesting a refund of the November 1, 2005, payment to Arlington in the amount of \$20,812.50, within 45 days of Continental's receipt of the Bill.
11. Arlington should pay Continental \$3,212.50, plus interest. 28 TEX. ADMIN. CODE § 133.304(r).

ORDER

IT IS, THEREFORE, ORDERED that Arlington Memorial Hospital, Respondent, is required to pay Continental Casualty Company, Petitioner, \$3,212.50 plus interest.

SIGNED December 10, 2008.

**TRAVIS VICKERY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**