

SOAH DOCKET NO. 454-15-1565.M4-NP

MDR NO. ____

_____, § **BEFORE THE STATE OFFICE**
Petitioner §
§
v. § **OF**
§
ARCH INSURANCE COMPANY, §
Respondent § **ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

_____ seeks reimbursement from Arch Insurance Company (Carrier) for medical costs she allegedly incurred after being injured at work. Over two years after her injury occurred, she sought a medical fee dispute resolution (MFDR) from the Texas Department of Insurance, Division of Workers' Compensation (Division). The Division's Medical Fee Dispute Resolution Findings and Decision (MFDR Decision) found that ____ was not entitled to reimbursement from Carrier because her claims were untimely. This appeal followed. After considering all of the evidence and arguments, the Administrative Law Judge (ALJ) agrees with the MFDR Decision that _____ failed to file her request within the required time limit.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no issues of notice or jurisdiction in this proceeding. Therefore, the ALJ addresses these matters in the Findings of Fact and Conclusions of Law without further discussion here.

On March 2, 2015, ALJ Rebecca S. Smith convened a hearing on the merits at the State Office of Administrative Hearings in Austin, Texas. _____ appeared through attorney Harry C. Arthur. Carrier appeared through attorney Jane L. Suchma. The record closed at the conclusion of the hearing on that same date.

II. DISCUSSION

A. Applicable Law

An injured employee may request an MFDR to seek an order requiring an insurance carrier to reimburse medical expenses that the employee paid.¹ Generally, a request for an MFDR is waived if not filed within one year after the dates of the service in dispute.² There are three exceptions to this one-year limitation period. _____ asserts that only one of these exceptions applies. That exception reads:

A request may be filed later than one year after the date(s) of service if . . . a related compensability, extent of injury, or liability dispute under Labor Code Chapter 410 has been filed, the medical fee dispute shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury, or liability.³

B. Evidence and Analysis

_____ offered two exhibits, and Carrier offered nine exhibits. All the offered exhibits were admitted without objection. Neither party presented any testimony.

In her MFDR request, _____ provided a list of medical expenses, totaling \$7,717.68, for services provided from December 5, 2011 through May 21, 2012. _____ filed the MFDR request on December 4, 2013, the date it was received by the Division. On its face, the MFDR request was filed more than a year after the services were provided, and this request is time-barred unless the exception for a filed compensability, extent of injury, or liability dispute applies.

Each party agrees that the one-year deadline was extended, although they point to different bases for the extension and different deadlines. _____ contends that her July 24, 2013 request for a Benefit Review Conference extended the MFDR deadline.⁴ This Request for a Benefit Review Conference contains a request for reimbursement for three medical items.⁵ It also contains the following request: “[t]emporary income benefits are wrong—need average weekly wage calculation.” It does not, however, address compensability, extent of injury, or liability.

¹ 28 Tex. Admin. Code § 133.307(b)(3).

² 28 Tex. Admin. Code § 133.307(c)(1)(A). _____ argued that this rule should be disregarded because the Texas Labor Code does not contain a one-year requirement. The ALJ will follow the rule.

³ 28 Tex. Admin. Code § 133.307(c)(1)(B)(ii).

⁴ Petitioner Ex. 1 at 50-54.

⁵ From the evidence, it appears that a Benefit Review Conference is essentially a mediation.

In contrast, Carrier asserts that the “related compensability, extent of injury, or liability dispute” was a contested case hearing on compensability and injury that was held on November 12, 2012. The Decision and Order from that contested case hearing, which found that _____ sustained a compensable injury, was dated November 20, 2012.⁶ An appeals panel of the Division mailed a notice stating that the November 20, 2012 Decision and Order became final on the date the notice was mailed, March 29, 2013.⁷ Although the exact date when she received this notice was not in evidence, _____ did not suggest that her receipt was in any way delayed.

The ALJ agrees with Carrier that _____ deadline began to run once she received the notice indicating that the Decision and Order on compensability and injury was final.⁸ Although no evidence was introduced about when _____ received this March 29, 2013 notice, it is reasonable to assume, as Carrier suggests, that she received it within five days of its issuance. The dispute reflected in the Decision and Order, not the inclusion of medical issues in a request for a Benefits Review Conference, was the relevant dispute over compensability and injury. She accordingly had 60 days from her receipt of the notice that the order became final in which to file her request for an MFDR. She did not file it until approximately six months after the Decision and Order became final.⁹ Therefore, _____ request for an MFDR is untimely and waived.

The ALJ concludes that _____ request for reimbursement is waived and therefore, Carrier is not required to pay her the disputed amount of \$7,717.68.¹⁰ Accordingly, the ALJ makes the following findings of fact and conclusions of law in support of this decision.

III. FINDINGS OF FACT

1. On _____, _____ suffered a back injury while at work.
2. Arch Insurance Company (Carrier) provided workers’ compensation insurance for _____ employer.
3. _____ and Carrier disagreed about the compensability of _____ injury.
4. A contested case hearing on compensability was held on November 12, 2012, at the Texas Department of Insurance, Division of Workers’ Compensation (Division).

⁶ Carrier Ex. G.

⁷ Carrier Ex. H.

⁸ 28 Tex. Admin. Code § 133.307(e)(1)(B)(ii).

⁹ The ALJ rejects _____ implied argument that mentioning a reimbursement dispute in a Benefit Review Conference is the same as requesting an MFDR. The rules establish that a request for an MFDR must be filed in a prescribed form and manner. 28 Tex. Admin. Code § 133.307(c). _____ followed that procedure in December 2013.

¹⁰ Carrier also challenges the requested amount. The ALJ does not need to address this issue, however.

5. On November 20, 2012, the Hearing Officer of the Division issued a Decision and Order, finding that _____ sustained a compensable injury.
6. On March 29, 2013, the Division mailed the parties a notice stating that the Decision and Order became a final order on that date.
7. The preponderance of the evidence indicates that _____ received the notice within five days of March 29, 2013.
8. _____ requested a Medical Fee Dispute Resolution (MFDR) from the Division on December 4, 2013.
9. In her MFDR request, _____ sought reimbursement for medical services provided from December 5, 2011 through May 21, 2012.
10. On April 4, 2014, the Division issued its Medical Fee Dispute Resolution Findings and Decision (MFDR Decision). The MFDR Decision determined that _____ request for an MFDR was untimely and should be denied on that basis.
11. _____ timely requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the MFDR Decision.
12. A Notice of Hearing informed the parties of the date, time, and location of the hearing; the matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.
13. On March 2, 2015, Administrative Law Judge Rebecca S. Smith convened a hearing on the merits in Austin, Texas. _____ appeared through attorney Harry C. Arthur. Carrier appeared through attorney Jane L. Suchma. The record closed at the conclusion of the hearing on that same date.
14. _____ request for MFDR was untimely and therefore is waived.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. Tex. Lab. Code § 413.031; Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051, 2001.052.

3. An injured employee may request an MFDR to resolve his or her request for reimbursement from the insurance carrier for medical expenses he or she paid. 28 Tex. Admin. Code § 133.307(b)(3).
4. A request for an MFDR is waived if not timely filed. 28 Tex. Admin. Code § 133.307(c)(1).
5. Generally, a request for an MFDR must be filed no later than one year after the dates of service in dispute. 28 Tex. Admin. Code § 133.307(c)(1)(A).
6. If a related compensability, extent of injury, or liability dispute has been filed, the MFDR shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury, or liability. 28 Tex. Admin. Code § 133.307(c)(1)(B)(i).
7. _____ did not file her MFDR request within 60 days of her receipt of the final Decision and Order on compensability.
8. _____ did not timely file her MFDR request and therefore waived it.

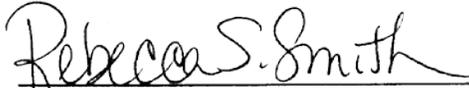
ORDER

IT IS ORDERED that Carrier is not required to reimburse _____ for services provided from December 5, 2011 through May 21, 2012.

NONPREVAILING PARTY DETERMINATION

Texas Labor Code § 413.0312(g) and 28 Texas Administrative Code § 133.307(h) require the nonprevailing party to reimburse the Division for the cost of services provided by SOAH, unless the injured employee is the nonprevailing party, in which case the insurance carrier must reimburse the Division. Texas Labor Code § 413.0312(i) requires SOAH to identify the nonprevailing party and any costs for services provided by SOAH in its final decision. For purposes of Texas Labor Code § 413.0312, _____ is the nonprevailing party. Nevertheless, Carrier is responsible for reimbursing the Division. Tex. Labor Code § 413.0312(g); 28 Tex. Admin. Code § 133.307(h)(3). The costs associated with this decision are set forth in Attachment A to this Decision and Order and are incorporated herein for all purposes.

SIGNED March 26, 2015.



REBECCA S. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS