

**SOAH DOCKET NO. 454-17-1460.M4-NP**  
**MR NO. \_\_\_\_\_**

_____, <b>Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>TWIN CITY FIRE INSURANCE CO.,</b> <b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

(Petitioner) challenges a decision of the Texas Department of Insurance, Division of Workers' Compensation that denied its request for reimbursement for six functional capacity evaluations (FCEs) billed to Twin City Fire Insurance Co. (Twin City). On January 24, 2017, Twin City filed a Motion for Summary Disposition. On February 20, 2017, Twin City filed Exhibits A, B, C, D, E, and F in support of its motion. All exhibits were admitted. (Petitioner) did not file a response to the motion. After considering the motion and the evidence accompanying it, the Administrative Law Judge (ALJ) concluded that Twin City established there were no genuine issues as to any material fact and that it was entitled to a decision in its favor as a matter of law without the need for hearing on the dispute. Consequently, the Motion for Summary Disposition was granted in an order dated February 23, 2017. This Decision and Order reflects that decision.

As set out in the Findings of Fact, (Petitioner) seeks reimbursement for six FCEs that occurred from August 4, 2015, through February 16, 2016. Twin City argued that (Petitioner) performed and was reimbursed for at least five FCEs prior to the ones underlying its request for reimbursement associated with this case. Twin City cites 28 Texas Administrative Code § 134.204(g) as limiting reimbursement for a maximum of three FCEs for each compensable injury. Consequently, it reasons, (Petitioner) has already been reimbursed for more than the allotted three FCEs prior to the ones underlying its reimbursement request in this case, and its request should be denied.

The ALJ agrees with Twin City's position. As set out in the Findings of Fact and Conclusions of Law, (Petitioner) is not entitled to any reimbursement.

## **I. FINDINGS OF FACT**

1. (Petitioner) challenges a September 13, 2016, decision of the Texas Department of Insurance, Division of Worker's Compensation (Division) that denied its request for reimbursement for six functional capacity evaluations (FCEs), which were administered to an injured worker on August 4, 2015, August 21, 2015, October 6, 2015, January 11, 2016, January 26, 2016, and February 16, 2016, and billed to Twin City Fire Insurance Co. (Twin City).
2. (Petitioner) timely requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the Division's decision.
3. On December 1, 2016, the Division issued a Notice of Hearing to the parties. The notice informed the parties of the date, time, and location of the hearing; the factual 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.
4. On January 24, 2017, Twin City filed a Motion for Summary Disposition in which it argued that, as a matter of law, (Petitioner) was not entitled to any reimbursement because it was previously reimbursed for the maximum number of FCEs allowed during the treatment of an injured worker.
5. (Petitioner) did not file a reply to the motion.
6. On February 24, 2017, the Administrative Law Judge (ALJ) issued an order granting the Motion for Summary Disposition in its entirety.
7. (Petitioner) billed Twin City and was reimbursed for at least three FCEs administered to the injured worker in February, April, and May 2014 in connection with the same compensable injury for which it provided services.

## **II. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to Texas Labor Code § 413.0312 and Texas Government Code ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with Texas Government Code §§ 2001.051-.052.

3. Pursuant to 28 Texas Administrative Code § 134.204(g), reimbursement is limited to a maximum of three FCEs for each compensable injury.
4. Because (Petitioner) was previously compensated for at least three FCEs for the compensable injury that is the subject of this case, it is not entitled to reimbursement for any of the FCEs performed from August 4, 2015, through February 16, 2016.

**ORDER**

**IT IS ORDERED** that (Petitioner) shall receive no reimbursement for FCEs performed on the injured worker from August 4, 2015, through February 16, 2016.

**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 of Workers' Compensation for the cost of services provided by SOAH. Texas Labor Code § 413.0312(i) requires that SOAH identify the nonprevailing party and any costs for services provided by SOAH in its final decision. (Petitioner) is the nonprevailing party, and 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 April 17, 2017.**

  
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**GARY W. BLKINS**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**