APPEAL NO. 031260-s
FILED JULY 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on April 22, 2003. The hearing officer resolved the disputed issue by deciding that the Hearings Division of the Texas Workers' Compensation Commission (Commission) does not have jurisdiction to determine the medical necessity of whether the proposed revision and/or replacement of the eight lead octrode spinal cord stimulator system should be performed. Although the claimant agrees with the hearing officer's decision, she has appealed a single finding of fact. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed as reformed.

The issue presented for resolution at the CCH was: "Is the proposed revision and/or replacement of the eight lead octrode system the direct and natural result of the compensable injury of _____?" The parties stipulated that the claimant sustained a compensable injury on _____. The medical records reflect that due to the compensable injury a device was implanted in the claimant's spine to control pain. The claimant testified that the device has had to be reprogrammed at various times since its implantation and that at some point the doctor who performed the surgery to implant the device performed testing to see if there was a proper attachment for the leads to the device. There was evidence that the claimant was in a physical altercation that resulted in her stimulator striking against a wall. The claimant testified that she attempted to get surgery to correct the problem with the stimulator but couldn't get the preauthorization. The preauthorization referral request dated January 29, 2003, was in evidence and states the request for spinal cord stimulation revision was denied citing the reason as "DAMAGE TO THE SCS SYSTEM [THE STIMULATOR] IS NOT RELATED TO THE ON THE JOB INJURY OR NORMAL COMPLICATIONS THAT OCCUR W/THESE SYSTEMS."

The carrier argued at the CCH that the claimant was involved in an altercation with her daughter and that altercation caused a disruption of the leads of the stimulator which required the revision. The carrier maintained, therefore, it should not be liable for the proposed revision and/or replacement of the eight lead octrode system.

Section 408.021(a) provides that, 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, and that the employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain

employment. In Texas Workers' Compensation Commission Appeal No. 991263, decided July 29, 1999, the Appeals Panel stated:

> the issue of whether or not treatment is reasonable and necessary for the claimant's compensable injury in the past or in the future is not within the jurisdiction of the hearing officer. The determination of what "health care is reasonably required by the nature of the injury" is a matter for the Medical Review Division of the Commission. Section 413.031(a); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.305 (Rule 133.305). The determination of "benefit disputes" are adjudicated by the Commission's Hearings Division. Rule 140.1. A "benefit dispute" is one "regarding compensability or eligibility for, or the amount of, income or death benefits." *Id.*

The issue to be decided at the CCH was somewhat inartfully worded and has caused some confusion regarding the true nature of the dispute. The wording of the issue gives the impression that the question to be decided is one of extent of injury. The 1989 Act, Section 401.011(16), defines "injury," in part, to mean "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." In Texas Workers' Compensation Commission Appeal No. 93414, decided July 5, 1993, the Appeals Panel cited with approval the following language from Maryland Casualty Company v. Sosa, 425 S.W.2d 871, 873 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e. *per curiam*, 432 S.W.2d 515):

> The law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefor, causes other injuries which render the employee incapable of work.

However, the carrier did not contend at the CCH, or on appeal, that the claimant's compensable injury had resolved and the claimant was not contending that she had an injury to any additional body part. Rather the issue was restricted to the revision and/or replacement of a device that was being used to treat the original compensable injury. The carrier has never contended that the claimant no longer needed the stimulator but rather maintains it should not be liable for its repair and/or replacement because the stimulator needed such revision or replacement because of the altercation.

We reform the hearing officer's determination to make clear that the threshold issue has been determined and in fact was not disputed at the CCH or on appeal that "the claimant's compensable injury has not resolved and that her current condition, including the stimulator attached to her spine, is related to her compensable injury."

Questions of whether medical treatment is reasonable and necessary for an injury are questions which under the 1989 Act have been placed in a separate and parallel adjudicative process—the medical dispute resolution process. Section 413.031.

See Texas Workers' Compensation Commission Appeal No. 992336, decided December 10, 1999. The question of the need for replacement and/or revision of the eight lead octrode system is for the Medical Dispute Resolution Division of the Commission. We note that neither party appealed this determination. The hearing officer correctly determined that the Hearings Division of the Commission does not have jurisdiction to determine the medical necessity of whether the proposed revision and/or replacement of the eight lead octrode spinal cord stimulator system should be performed.

The hearing officer noted that no evidence was offered from either party that the Medical Review Division through an Independent Review Organization had made a decision regarding this preauthorization issue under the applicable rules. This is a question of medical dispute and the denial of a preauthorization must be appealed through the process outlined in Rule 133.305.

The claimant appealed the hearing officer's finding of fact that she has not filed an appeal of the carrier's denial with the Medical Dispute Resolution department of the Commission. Based on the foregoing, we consider this finding to be surplusage. Therefore, we reform this decision by striking Finding of Fact No. 5.

We affirm the decision and order of the hearing officer as reformed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Veronica Lopez-Ruberto
Appeals Judge

_____
Edward Vilano
Appeals Judge