

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUE

A benefit contested case hearing was held on May 18, 2011, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Medical Fee Dispute Resolution Findings and Decision that HK, M.D. is entitled to \$524.28 for services rendered as designated doctor on March 4, 2009?

PARTIES PRESENT

Petitioner/Carrier appeared by telephone and was represented by attorney JA. PL, layperson, appeared by telephone on behalf of Respondent/Provider. Claimant did not appear and his attendance was waived.

BACKGROUND

A contested case hearing was held on October 13, 2009 to determine whether the Claimant sustained a compensable injury on _____. The hearing officer determined that the Claimant did not sustain a compensable injury. The Appeals Panel affirmed the hearing officer's decision and order finally adjudicating that the Claimant did not sustain a compensable injury.

Dr. K was appointed by the Division as designated doctor to determine if there was an injury resulting from the claimed incident in accordance with Texas Labor Code §408.0041(a). Dr. K examined the Claimant on March 4, 2009, submitted his report and properly tendered a bill to the Carrier for payment for said services.

Petitioner/Carrier denied payment. The explanation of benefits dated June 12, 2009 provides the following reasons to dispute the charges: entitlement to benefits and extent of injury. The explanation of benefits dated August 3, 2009 disputed the charges on the basis of a workers' compensation state fee schedule adjustment. The August 19, 2009 explanation disputed the charges on the basis of entitlement to benefits. Dr. K then requested medical fee dispute resolution.

On February 2, 2011, the medical fee dispute resolution officer issued findings and a decision in favor of Dr. K. Petitioner/Carrier appealed the decision to a Medical Contested Case Hearing.

At this hearing, Petitioner/Carrier argued that the Division had no authority to order Dr. K to perform a designated doctor examination on Claimant. Petitioner/Carrier maintained that the Division can only order a designated doctor's examination for Claimants who have been determined

to have a compensable injury. Petitioner/Carrier asserted that a compensable injury is a prerequisite for Carrier to be liable for a designated doctor's bill.

Carrier also asserts that Dr. K was improperly appointed to determine compensability of the claim and states that the language, "to determine if there was an injury resulting from the claimed incident" is not an issue similar to those described by Subdivisions (1)-(5) of Texas Labor Code §408.0041(a) but a question of compensability.

Texas Labor Code §408.0041 provides in pertinent part the following for a designated doctor examination:

- (a) At the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about:
 - (1) the impairment caused by the compensable injury;
 - (2) the attainment of maximum medical improvement;
 - (3) the extent of the employee's compensable injury;
 - (4) whether the injured employee's disability is a direct result of the work-related injury;
 - (5) the ability of the employee to return to work; or
 - (6) issues similar to those described by Subdivisions (1)-(5).

- (h) The insurance carrier shall pay for:
 - (1) an examination required under Subsections (a) or (f); and
 - (2) the reasonable expenses incident to the employee in submitting to the examination.

In the present case, the Respondent/Provider argued that the designated doctor, Dr. K, was properly appointed to determine if an injury in fact occurred and not whether the injury was compensable. The facts in evidence support that the Respondent/Provider was appointed under the authority of subsection (a)(6) of §408.0041 and that he should be paid by Petitioner/Carrier for the examination. Therefore, Petitioner/Carrier is liable for payment.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

- 1. The parties stipulated to the following facts:
 - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On _____, Claimant was the employee of (Employer).
 - C. The Medical Fee Dispute Resolution Officer determined that Respondent/Provider is entitled to \$524.28 plus applicable accrued interest for the

designated doctor's examination on date of service March 4, 2009.

2. Petitioner/Carrier delivered to Respondent/Provider a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. It was finally adjudicated that the Claimant did not sustain a compensable injury on _____.
4. Dr. K was appointed by the Division to serve as its designated doctor to determine if there was an injury resulting from the claimed incident in accordance with Texas Labor Code §408.0041(a).
5. On March 4, 2009, Dr. K performed a designated doctor examination in accordance with Texas Labor Code §408.0041(a).
6. Dr. K's services dated March 4, 2009 were properly billed under CPT codes 99456-RE-W9 and 95851.
7. On February 2, 2011, the Medical Fee Dispute Resolution Findings and Decision was issued ordering Carrier to pay the amount of \$524.28 plus interest for the services billed for March 4, 2009.
8. In accordance with Texas Labor Code §408.0041(h)(1), Carrier shall pay for an examination required under §408.0041 (a) or (f).

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the Medical Fee Dispute Resolution Findings & Decision that Respondent/Provider, Dr. K, is entitled to reimbursement in the amount of \$524.28 plus applicable accrued interest for the designated doctor's examination CPT Code 99456-RE-W9 and additional testing for CPT code 95851 on March 4, 2009.

DECISION

The preponderance of the evidence is not contrary to the decision of the Medical Fee Dispute Resolution Findings & Decision that Respondent/Provider, Dr. K, is entitled to reimbursement in the amount of \$524.28 plus applicable accrued interest for the designated doctor's examination CPT Code 99456-RE-W9 and additional testing for CPT code 95851 on March 4, 2009.

ORDER

Petitioner/Carrier is liable for the benefits at issue in this hearing.

The true corporate name of the Carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TX 75201**

Signed this 18th day of May, 2011.

Katherine D'Aunno Buchanan
Hearing Officer