

**SOAH DOCKET NO. 453-04-4528.M5
TWCC MDR NO. M5-04-1243-01**

**VONO,
Petitioner**

**V.
EMPLOYERS INSURANCE COMPANY
OF WAUSAU
Respondent**

BEFORE THE STATE OFFICE

**OF
ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

This case is a dispute over whether Employers Insurance Company of Wausau (Respondent) should reimburse VONO (Petitioner) the sum of \$1,177.96 for prescription medications provided to an injured worker (Claimant) from January 8, 2003, until June 16, 2003. The Administrative Law Judge (ALJ) concludes that Petitioner met its burden of proving the medications were medically necessary. Therefore, Respondent should reimburse Petitioner for the cost of the medications.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Administrative Law Judge (ALJ) Penny A. Wilkov conducted a hearing on July 6, 2004 at the State Office of Administrative Hearings (SOAH), William P. Clements Building, 300 West 15th Street, Austin, Texas. Petitioner appeared through its designated representative, Nicky Otts. Respondent appeared through its designated representative, Charlotte Salter. The record closed the day of the hearing. The parties did not contest notice or jurisdiction.

II. DISCUSSION

A. Background.

Claimant sustained a work-related neck, shoulder, and back injury on ___, when he attempted to lift a one-hundred-pound dock plate and felt a sudden pain in his lumbar spine.

Claimant has been diagnosed with cervical and lumbar radiculopathy, AC joint separation, and cervical and lumbar segmental dysfunction.¹ Claimant describes symptoms of continued pain

¹ Respondent's Exhibit 1, page A13, (June 16, 2003, Examination by A. J. Morris, M. D.)

and spasms of the cervical and lumbar regions and right shoulder. He reports a subjective level of pain of eight on a scale of one to ten. The medical records indicate that Claimant has seen various physicians and chiropractors since the date of the injury, but at the time period in issue, Claimant had been primarily under the care of A. J. Morris, M. D. Claimant's history of treatments has included medications, a TENS unit, chiropractic care, physical therapy, and work hardening in conjunction with various diagnostic tools including an MRI, x-rays, and electrodiagnostic tests.²

Respondent denied payment as medically unnecessary, based upon a peer review, the following medications prescribed by Claimant's physician and filled by the pharmacy:³

Disputed Services

Date of Service	Item	Amount in Dispute
January 8, 2003	Hydrocodone	\$52.94
April 16, 2003	Hydrocodone	\$60.93
June 16, 2003	Hydrocodone	\$60.93
January 8, 2003	Carisoprodol	\$312.40
April 16, 2003	Carisoprodol	\$312.40
June 16, 2003	Carisoprodol	\$312.40
January 8, 2003	Temazepam	\$32.98
April 16, 2003	Temazepam	\$32.98
TOTAL		\$1,177.96

² Petitioner's Exhibit 1, page 5.

³ Based on Respondent's denial, Petitioner sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an Independent Review Organization (IRO) designated by the Commission for the review process. The IRO determined that the medications were not medically necessary treatment for Claimant's compensable injury.

B. Evidence and Argument

1. Petitioner

Petitioner is the dispensing pharmacy of the medications in issue. Petitioner presented Claimant's medical records and called Rick Taylor, D. O. as a witness. Dr. Taylor is a 1992 graduate of the Kirksville College of Osteopathic Medicine and practices primarily occupational medicine and pain management in Palestine, Texas. He is board certified by the American Board of Family Practice and is completing board certification by the American Academy of Pain Management.

After reviewing Claimant's records, Dr. Taylor noted that Claimant had suffered serious injuries including a second-degree separated shoulder and neck and lumbar spine radiculopathy, a painful nerve irritation radiating into the upper and lower extremities. During the time period of disputed services, January, 2003, through June, 2003, Claimant's treating physician, A. J. Morris, M. D., prescribed Hydrocodone for pain, Carisoprodol as a muscle relaxant, and Temazepam for sleeplessness.⁴ In Dr. Taylor's opinion, the Hydrocodone prescribed was a reasonable and necessary medication for relief of Claimant's recurrent pain, provided the treating physician carefully monitored Claimant for signs of addiction or misuse. Similarly, the prescription for Carisoprodol was medically necessary since Claimant experienced muscle spasms requiring an appropriate prescription muscle relaxer. With regard to the Temazepam, Dr. Taylor believes that it is reasonable to prescribe this medication, on a short-term basis, for chronic-pain-related insomnia. Here, the Temazepam was prescribed for thirty days on two occasions in nine months, which in Dr. Taylor's opinion is appropriate for occasional insomnia.

Further, Dr. Taylor addressed the issue that Claimant, as a chronic pain patient, was susceptible to medications capable of inducing increased tolerance, dependence, and addiction. Dr. Taylor points out that Claimant, with a fourteen percent impairment rating, has chronic pain and a significant permanent loss of function.⁵ However, tolerance, dependence, and addiction, resulting from the prolonged use of medications, was not seen in this particular case. Generally, addiction is a

⁴Celebrex was also prescribed for pain but payment is not in issue in this case.

⁵Petitioner's Exhibit 2, page 5.

psychiatric condition that could, for example, result in a patient going to more than one doctor in an attempt to obtain escalating medication. Although Dr. Taylor does concede that these three medications are less efficacious over time and could lead to dependence, it is a fair trade-off for relief of Claimant's symptoms, particularly when the medical records do not reflect signs of addictive or dependent behavior.

2. Respondent

Respondent disputes that the medications were medically necessary because Claimant did not have an injury serious enough to warrant a two-year use of habit-forming drugs. Respondent relies on a peer review conducted on February 11, 2003, by John A. Sklar, M. D., a Board Certified specialist in Physical Medicine Rehabilitation.⁶ Dr. Sklar disputes the diagnosis that Claimant had any evidence of radiculopathy, noting that the MRI did not confirm the presence of the condition, and disagrees that Claimant's pain is directly related to his injury. Rather, Dr. Sklar >s opinion is that Claimant suffers from chronic pain syndrome, a non-specific pain that persists beyond normal healing parameters. In such case, escalating medication usage would not aid in recovery but rather serve to hinder recovery by keeping Claimant focused on the pain. In Dr. Sklar's opinion, Claimant would be better served by immersing himself in normal life and work activities rather than dwelling on the pain.

Dr. Sklar is also of the opinion that Claimant was over-treated in this case, including the medication. Dr. Sklar points out that Claimant has been to numerous chiropractors and physicians who have performed a multitude of services including passive chiropractic treatment, exercises, and manipulations, lumbar and cervical x-rays and MRI's, an EMG, facet injections, functional capacity tests, medications, work hardening, and a TENS unit. Dr. Sklar also notes that even though Claimant returned to work, the medications were still being prescribed at the same level without any attempt to wean Claimant off and return him to full functionality. In Dr. Sklar's opinion, the medications were not medically necessary because they served to exacerbate Claimant's recovery and are part of the pattern of over-treatment of Claimant's condition.

⁶Respondent's Exhibit 1, pages A5-A11.

C. Applicable Law

Under the workers' compensation system, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LAB. CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LAB. CODE ANN. § 401.011(19).

D. Analysis and Conclusion

The testimony and evidence established that the medications prescribed in this case, Hydrocodone for pain, Carisoprodol as a muscle relaxant, and Temazepam for sleeplessness, during the time period in issue, January 8, 2003 through June 16, 2003, were reasonable and necessary to relieve Claimant's pain, prevent muscle spasm, and preclude insomnia. Although both Dr. Taylor and Dr. Sklar agree that it was in Claimant's best interest that the medications be used, at most, short-term, the evidence does not show that Claimant's use of the medications was excessive or disproportionate to the symptoms he was experiencing. The evidence also indicated that Claimant was monitored for signs of addiction or dependence and there is no evidence that Claimant used the medications inappropriately.

In conclusion, there is evidence that the medications have relieved Claimant's symptoms and consequently, the ALJ finds that Petitioner met its burden of proof that the medications prescribed from January 2003, through June 2003, were medically necessary.

III. FINDINGS OF FACT

1. Claimant sustained a work-related neck, shoulder, and back injury on ___, when he attempted to lift a one-hundred-pound dock plate and felt a sudden pain in his lumbar spine.
2. Claimant has been generally diagnosed with cervical and lumbar radiculopathy, AC joint separation, and cervical and lumbar segmental dysfunction.

3. Claimant describes symptoms of continued pain and spasms of the cervical and lumbar regions and right shoulder and reports a subjective level of pain of eight on a scale of one to ten.
4. The medical records indicate that, since the injury, Claimant has seen various physicians and chiropractors but at the time in issue, Claimant had been primarily under the care of A. J. Morris, M.D.
5. From January, 2003, through September 2003, Dr. Morris prescribed Hydrocodone for pain, Carisoprodol as a muscle relaxant, and Temazepam for sleeplessness.
6. VONO (Petitioner) filled Claimant's January, April, and June 2003 prescriptions from Dr. Morris. Petitioner then billed Employers Insurance Company of Wausau (Respondent) \$1,177.96 for the medications.
7. Respondent declined to reimburse the medications, as medically unnecessary based upon a peer review.
8. Based on Respondent's denial, Petitioner sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an Independent Review Organization (IRO) designated by the Commission for the review process. The IRO determined that the medications were not medically necessary treatment for Claimant's compensable injury.
9. Petitioner then requested a hearing before the State Office of Administrative Hearings. The hearing convened on July 6, 2004, with Administrative Law Judge Penny A. Wilkov presiding. Petitioner appeared through its designated representative, Nicky Otts. Respondent appeared through its designated representative, Charlotte Salter. The hearing concluded and the record closed that same day.
10. From January 8, 2003 through June 16, 2003, the medications prescribed in this case, Hydrocodone, Carisoprodol, and Temazepam, were medically reasonable and necessary to relieve Claimant's pain, prevent muscle spasm, and preclude insomnia.
11. The medications have relieved Claimant's symptoms resulting from the injury.
12. The use of the medications was not excessive or disproportionate to the symptoms he was experiencing.
13. Claimant was monitored for signs of addiction or dependence and Claimant did not use the medications inappropriately.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. ' 413.031(k), and TEX. GOV' T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV' T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE ' 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV' T CODE ANN. ' ' 2001.051 and 2001.052.
5. Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE ' ' 148.21(h) and 133.308(w).
6. Petitioner established, by a preponderance of the evidence, that the disputed services were medically reasonable and necessary under TEX. LABOR CODE ANN. ' 408.021(a).

ORDER

THEREFORE IT IS ORDERED that Employers Insurance Company of Wausau reimburse VONO the sum of \$1,177.96 plus applicable interest for the Hydrocodone, Carisoprodol, and Temazepam, provided to Claimant between January 8, 2003 and June 16, 2003.

SIGNED August 24, 2004.

**PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**