

**SOAH DOCKET NO. 453-05-6596.M5  
TWCC MR. NO. M5-05-0187-01**

<b>CONTINENTAL CASUALTY CO.,</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	<b>§</b>	
	<b>§</b>	
<b>VS.</b>	<b>§</b>	<b>OF</b>
	<b>§</b>	
<b>—,</b>	<b>§</b>	
<b>Respondent</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

**I. FINDINGS OF FACT**

1. On \_\_\_\_, the Claimant and Respondent, \_\_\_\_, suffered an injury to her neck that was a compensable injury under the Texas Workers' Compensation Act ("the Act"), TEX. LABOR CODE ANN. ch. 401 *et seq.*
2. As part of her treatment for persistent pain associated with the injury, Respondent received a prescription (No. 6626739) for Neurontin capsules (300 mg.), which she had filled at a pharmacy on July 8, 2004.
3. Respondent's receipt for the transaction noted in Finding of Fact No. 2 indicated that she made no co-payment for the prescription at issue.
4. TMESYS, Inc., acting on behalf of the pharmacy that filled Prescription No. 6626739, subsequently submitted to Continental Casualty Co. ("Petitioner") - the insurance carrier for Respondent's former employer - a request for reimbursement with respect to that prescription, in the amount of \$90.19.
5. On August 5, 2004, Petitioner issued payment of \$90.19 to TMESYS, Inc., to reimburse Prescription No. 6626739.
6. Respondent subsequently submitted to Petitioner her own request for reimbursement of Prescription No. 6626739.
7. Petitioner denied Respondent's request for reimbursement.
8. Respondent made a timely request to the Medical Review Division ("MRD") of the Texas Workers' Compensation Commission ("Commission")<sup>1</sup> for medical dispute resolution with respect to the prescription.

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<sup>1</sup> Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Workers' Compensation within the Texas Department of Insurance.

9. The independent review organization (“IRO”) to which the MRD referred the dispute concluded, in a decision dated April 7, 2005, that the Neurontin capsules covered by the disputed prescription were medically necessary for the treatment of Respondent’s injury.
10. In a decision dated April 13, 2005, (in dispute resolution docket No. M5-05-0187-01) the MRD confirmed the IRO’s decision and ordered Petitioner to pay the unpaid medical fees of \$40.19 associated with this dispute.
11. The record in this case does not reflect any sum of \$40.19 associated with the disputed prescription, although it does reflect a charge of \$40.19 for a separate prescription (No. 0241448), filled for Respondent at a different pharmacy on May 7, 2004.
12. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings (“SOAH”), seeking review and reversal of the IRO and MRD decisions regarding reimbursement.
13. The Commission mailed notice of the hearing’s setting to the parties at their addresses on June 10, 2005.
14. Pursuant to the notice, a hearing in this matter was convened on January 9, 2006, in Austin, Texas, before Mike Rogan, an Administrative Law Judge with SOAH. Petitioner appeared by telephone. Respondent did not appear. The hearing was concluded and the record was closed on the same date.

## **II. CONCLUSIONS OF LAW**

1. The Texas Workers’ Compensation Commission (or its successor agency, the Texas Department of Insurance) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (“the Act”), TEX. LABOR CODE ANN. § 413.031.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV’T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV’T CODE ANN. ch. 2001 and the Commission’s rules, 28 TEXAS ADMIN. CODE (“TAC”) ' 133.305(g) and §§ 148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV’T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).
6. Under § 408.021(a) of the Act, “An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury,” and under § 408.021(b) of the Act, “Medical benefits are payable from the date of the compensable injury.”

7. As § 408.021(b) of the Act defines health care benefits partly in terms of how payment is made for necessary treatment, the mode of such payment is subject to fundamental requirements of § 408.21 that the care to which an employee is entitled must be reasonable and necessary.
8. Reimbursement more than once for a single instance of medical service is not medically necessary or reasonable.
9. Based upon the foregoing Findings of Fact and Conclusions of Law, reimbursing Respondent for Prescription No. 6626739 - when full reimbursement for that service has already been made by Petitioner to the service provider B has not been shown to constitute a reasonable or necessary element of health care treatment under § 408.021 of the Act.
10. Based upon the foregoing Findings of Fact and Conclusions of Law, the Decision of the Medical Review Division, issued in this matter on April 13, 2005, (in dispute resolution docket No. M5-05-0187-01) is incorrect, insofar as it requires reimbursement for Prescription No. 6626739, which had already been paid by Petitioner.

**ORDER**

**IT IS THEREFORE, ORDERED** that reimbursement relating to Prescription No. 6626739 for the medication Neurontin on service date July 8, 2004, as sought by Claimant and Respondent \_\_\_\_, is hereby denied.

**SIGNED January 20, 2006.**

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**MIKE ROGAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**