

SOAH DOCKET NO. 454-06-2950.P1

INSURANCE COMPANY OF THE	§	BEFORE THE STATE OFFICE
STATE OF PENNSYLVANIA,	§	
	§	
V.	§	
	§	
TEXAS DEPARTMENT OF	§	OF
INSURANCE, DIVISION OF	§	
WORKERS' COMPENSATION, AND	§	
STEPHEN JEFFERY JACKSON, M.D.	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

The Insurance Company of the State of Pennsylvania (Carrier) requested a hearing to contest a medical interlocutory order issued by the Texas Department of Insurance, Division of Workers' Compensation (Division) regarding medical services for R.H. (Claimant). Stephen Jeffery Jackson, M.D., prescribed certain medications for the Claimant, and Carrier denied the medical necessity of such medications and a related office visit. The dispute was referred to an independent doctor for a Prospective Review Medical Examination (PRME). The PRME doctor found that the prescribed medications and related office visit were reasonably medically necessary to treat the Claimant's compensable injury, and the Division ordered the Carrier liable for reimbursing for the services.

The only dispute in this case is whether the prescribed medications and one office visit in a three month period were reasonably necessary to treat the Claimant's compensable injury. After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) concludes that Carrier has failed to show that the treatment in issue was not medically necessary for Claimant. Therefore, because Carrier has not met its burden of proof, the ALJ upholds the interlocutory order requiring the Carrier to reimburse for the treatment.

II. DISCUSSION AND ANALYSIS

This case involves a compensable injury to Claimant that occurred in [redacted], when Claimant was thrown from a three-wheel vehicle at his place of employment and suffered an injury to his back. Claimant was initially seen by Richard Haenke, D.O. In June [redacted] Dr. Haenke found Claimant to be at maximum medical improvement, with a 0% impairment rating. However, Claimant was seen by other physicians thereafter and found to have at least a 5% impairment rating by three separate doctors (one of which was the result of an independent medical examination). Dr. Jackson began treating Claimant in 2005, and concluded that he had chronic pain syndrome related to his compensable injury of [redacted]. When Dr. Jackson first began treating him, Claimant was taking numerous different medications including various medications for pain. Since that time, Claimant's use of medications has been reduced in half, and Claimant now takes only Zoloft for depression and Ambien to help him sleep better. Claimant has been able to continue working.

At the hearing, the Carrier presented numerous exhibits in support of its contention that Zoloft and Ambien are not necessary treatment for Claimant, including medical reports by Dr. Richard Haenke and Dr. Ferral Endsley and medical articles. Carrier pointed out that Claimant's injury occurred in [redacted] and he was determined to have reached maximum medical improvement by his initial treating doctor that same year. Carrier also notes that, during a contested case hearing in 2006, a Division hearing officer determined that Claimant's compensable injury as of that date included only depression and anxiety, and no ongoing back injuries. Accordingly, Carrier disputes that any continuing treatment for pain would be appropriate. Moreover, despite the extent of injury determination by the hearing examiner, Carrier argues that ongoing issues of depression are not related to Claimant's initial back injury in [redacted]. Finally, even if Claimant's depression was compensable, Carrier asserts that Claimant's sleeplessness cannot be shown to be related to his compensable injury (as opposed to being a side effect from Zoloft), and therefore Ambien would not be necessary treatment for him.

Both the Division and Dr. Jackson disagree with Carrier's position and argue that Claimant clearly still has ongoing depression and chronic pain from his injury in . Dr. Jackson testified that he has successfully weaned Claimant off pain medications through his treatment. He opined that Claimant still suffers from depression—which was determined to be part of his compensable injury in the contested case hearing last year—and needs Zoloft for his condition. Dr. Jackson also testified that Claimant's sleeplessness was not a side effect from taking Zoloft, but resulted from Claimant awakening from back pain in the middle of the night if he did not take sleep medication. The Division and Dr. Jackson argue that, given his opinion and that of the PRME doctor, it is clear that the both Ambien and Zoloft are appropriate ongoing treatment for Claimant's injury.

After considering the evidence, the ALJ concludes that the Carrier has failed to show that the office visit and prescription medications Zoloft and Ambien are not necessary for treatment of Claimant's compensable injury. Therefore, the medical interlocutory order is upheld. In reaching this decision, the ALJ notes that Dr. Jackson was a very credible witness, and his treatment was shown to have provided benefit to Claimant, particularly in reducing his dependence on medications. Moreover, the ALJ is not inclined to revisit the extent of injury determination that found that Claimant's depression and anxiety were part of his compensable injury. Therefore, because Claimant's injury includes his ongoing depression, the use of Zoloft is appropriate. Ambien is also appropriate to help Claimant's clearly identified sleep problems, which may be related to Claimant's anxiety or his ongoing chronic pain. Either way, Carrier has not persuasively shown that Ambien is not appropriate for Claimant's compensable injury.¹

In support of this decision, the ALJ makes the following findings of fact and conclusions of law.

¹ Dr. Jackson persuasively testified to the medical necessity of Ambien for Claimant. Carrier offered no controverting expert testimony. To the extent it is unclear whether Ambien is appropriate for Claimant's compensable injury, as opposed to conditions not arising from his compensable injury, it is Carrier's responsibility to clearly resolve such uncertainty to sustain its burden of proof. Such was not done in this case.

III. FINDINGS OF FACT

1. On . (Claimant) was thrown from a three-wheel vehicle at his place of employment and suffered a compensable injury to his back.
2. On the date of injury, the Insurance Company of the State of Pennsylvania (Carrier) was the workers' compensation insurance carrier for Claimant's employer.
3. Claimant was initially seen by Richard Haenke, D.O., for treatment of his injury.
4. In Dr. Haenke found Claimant to be at maximum medical improvement, with a 0% impairment rating.
5. Claimant was seen by other physicians thereafter and found to have at least a 5% impairment rating by three separate doctors (one of whom performed an independent medical examination).
6. Stephen Jeffery Jackson, M.D., began treating Claimant in 2005.
7. When Dr. Jackson first began treating him, Claimant was taking numerous different medications including various medications for pain.
8. Since Dr. Jackson first began treating him, Claimant's use of medications has been reduced in half, and Claimant now takes only Zoloft for depression and Ambien to help him sleep better.
9. Claimant has been able to continue working.
10. In March 2006, as a result of a contested case hearing, a Division hearing officer determined that Claimant's compensable injury included depression and anxiety.
11. Claimant continues to suffer from depression and ongoing sleep problems related to chronic pain.
12. Zoloft is an appropriate treatment for depression.
13. Ambien is an appropriate treatment for sleep problems.
14. It is appropriate for Dr. Jackson to see Claimant once every three months to monitor his progress and his medication levels.

15. On April 19, 2006, Dr. Jackson requested a prospective review of medical care for the following treatment he proposed for Claimant: one office visit every three months and the daily use of Zoloft and Ambien.
16. The Texas Department of Insurance, Division of Workers' Compensation (Division) assigned the matter to a PRME doctor in accordance with 28 TEX. ADMIN. CODE §134.650.
17. On June 20, 2006, the PRME doctor issued a decision concluding that the proposed services were medically necessary to treat the compensable injury.
18. On July 3, 2006, the Division issued an interlocutory order, based on the PRME doctor's review and under the authority of TEX. LABOR CODE ANN. §413.055(a), requiring Carrier to reimburse for the proposed services.
19. On July 12, 2006, Carrier requested a hearing by the State Office of Administrative Hearings (SOAH) to appeal the interlocutory order.
20. On July 25, 2006, the Division sent notice of the SOAH hearing in this matter to all parties.
21. All parties received adequate notice of not less than 10 days of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
22. On February 28, 2007, SOAH Administrative Law Judge Craig R. Bennett held a contested case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Carrier appeared at the hearing through its attorney, Chuck Finch. Dr. Jackson appeared at the hearing by telephone. The Division appeared at the hearing through its attorney, Terra Colvin. The hearing concluded and the record closed that same day.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. §§ 402.073(b) and 413.055(c) and TEX. GOV'T. CODE ANN. ch. 2003.
2. Notice of the hearing was proper and timely. TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.

3. 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 that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a).
4. Carrier had the burden of proving by the preponderance of the evidence that the proposed services are not reasonably medically necessary to treat Claimant's compensable injury. 1 TEX. ADMIN. CODE § 155.41(b); 28 TEX. ADMIN. CODE § 148.14(a).
5. Based on the above Findings of Fact and Conclusions of Law, Carrier has failed to show that the treatment in issue (one office visit every three months and daily use of Zolofit and Ambien) was not medically necessary to treat Claimant's compensable injury.
6. Based on the above Findings of Fact and Conclusions of Law, the interlocutory order should be set upheld.

ORDER

IT IS ORDERED THAT the Division's interlocutory order of July 3, 2006, in this matter is upheld.

SIGNED March 5, 2007.



CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS