

SOAH DOCKET NO. 454-18-5138.M4-NP
DWC FILE NO. _____

HEALTHCARE PROVIDER,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
CARRIER,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case involves a dispute regarding payment for medical services provided by Healthcare Provider (HCP) covered by the worker’s compensation insurance system. The Texas Department of Insurance’s Division of Worker’s Compensation (Division) conducted a medical fee dispute resolution (MFDR) and declined to order Carrier to reimburse HCP amount of \$276.03. The Administrative Law Judge (ALJ) concludes that HCP is not entitled to this additional reimbursement from Carrier for medical services because HCP failed to appeal the MFDR decision to the State Office of Administrative Hearings (SOAH) in accordance with Division rules.

I. NOTICE AND PROCEDURAL HISTORY

On August 15, 2018, the Division filed a Notice of Hearing in this docket, which notified the parties that the hearing on the merits would be held in Austin, Texas at SOAH’s offices on October 29, 2018. On October 29, 2018, Carrier filed a “Motion to Dismiss for Lack of Jurisdiction” (motion). Because the motion was filed as the hearing was about to commence, HCP had not had an opportunity to review or comment on the motion. ALJ Steven Neinast, therefore, convened the hearing on October 29, 2018, allowed testimony, and accepted into the record exhibits proffered by both HCP and Carrier, with the understanding the merits of the motion would be considered and addressed by the ALJ after HCP had an opportunity to

respond.¹ At the hearing, HCP represented himself. Attorney RJ represented the Carrier.

On October 30, 2018, Carrier filed an “Amended Motion to Dismiss for Lack of Jurisdiction” (amended motion). HCP filed additional documentation on November 6, 2018, which are hand-written notes detailing HCP’s communications, or attempts to communicate, with the Carrier and/or the Division subsequent to the MFDR hearing. HCP’s transmittal letter refers to these documents as a “Task log process,” and asks that they be included with his exhibits. Carrier did not file an objection to the Task log process documents. Accordingly, the Task log process documents are **ADMITTED** into the record as pages 71-74 of Petitioner’s Exhibit A. With receipt of the Task log process, the record in this case closed on November 6, 2018.

The ALJ finds that SOAH has jurisdiction to consider the amended motion, but does not have jurisdiction to address the merits of this case because HCP did not timely file the requisite appeal to SOAH. There is no issue regarding notice, which will be addressed separately in the Findings of Fact below.

II. DISCUSSION AND ANALYSIS

A. Background Regarding the Amended Motion

On April 11, 2018, the parties attended a telephonic medical fee benefit review conference (MFBRC) before the Division. The dispute was over a \$276.03 fee charged by HCP as part of a new patient office visit by a person injured in a job-related incident. The parties did not resolve their dispute at that time; Carrier declined to pay the \$276.03. In accordance with the Texas Administrative Code, HCP had 20 days from the conclusion of the MFBRC to appeal the MFDR decision by requesting a contested case hearing before SOAH.² Such a request “must filed with the Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers’

¹ The exhibits admitted into the record without opposition were Respondent’s Exhibits A through D, and Petitioner’s (HCP’s) Exhibit A.

² 28 Tex. Admin. Code § 133.307(g)(2)(A).

Compensation, P.O. Box 17787, Austin, Texas 78744-7787.”³ Based on the April 11, 2018 MFBRC date, the deadline for the HCP to file his appeal in this case was May 1, 2018. HCP filed his appeal three days late on May 4, 2018.⁴

Carrier also contends that, regardless of the missed filing deadline, HCP did not file his appeal request (also referred to as a DWC Form 49) at the appropriate Division address.⁵ Instead of filing his DWC Form 49 with the Chief Clerk of Proceedings at the address set out above, HCP sent his DWC Form 49 to the Texas Department of Insurance – Division of Worker’s Compensation, State Office of Administrative Hearings, 7551 Metro Center, Suite 100 MS 35, Austin, Texas 78744. The Division’s records show that it did not receive a properly filed DWC Form 49 from HCP until July 31, 2018, which was almost three months after the May 1, 2018 deadline.⁶ In summary, Carrier contends that HCP’s request for a SOAH hearing was both untimely and improperly filed and, as such, SOAH is without jurisdiction to hear this matter and this case should be dismissed.⁷

B. Discussion

Although both parties’ exhibits offer extensive evidence regarding the underlying facts and background regarding this contested case, the ALJ does not have jurisdiction to consider the merits of this case because, as established by Carrier, HCP failed to file his DWC Form 49 in accordance with applicable rules as to both time and place.

C. Applicable Law

If the medical fee dispute remains unresolved, an MFBRC may be requested. If the issues remain unresolved after an MFBRC, the matter may be referred to SOAH for a contested case hearing as long as the request is properly filed. According to 28 Texas Administrative Code

³ Petitioner’s Ex. A at 42.

⁴ Compare Petitioner’s Ex. A at 51 (confirming that the Benefit Review Conference ended on April 11, 2018) with Petitioner’s Ex. A at 52 (stating May 4, 2018, as the date HCP signed his appeal).

⁵ Amended Motion at 2.

⁶ Respondent’s Ex. D at 103.

⁷ Amended Motion at 3.

§ 133.307(g)(2)(A), the party requesting a contested case hearing must file a written request “with the Division’s Chief Clerk of Proceedings not later than 20 days after conclusion of the benefit review conference in accordance with § 148.3 of this title (relating to Requesting a Hearing).”

First, as noted above, HCP failed to file his request for a contested case hearing “not later than 20 days” after conclusion of the MFBRC. His signature on the DWC Form 49 is dated May 4, 2018, which was 23 days after the conclusion of the MFBRC.⁸ Second, even if he had filed his request within 20 days, he did not timely file his DWC Form 49 with the Division’s Chief Clerk of Proceedings. The date the Division’s Chief Clerk of Proceedings is found to have received the request is governed by 28 Texas Administrative Code § 148.3(c), which provides:

When a request for a hearing is addressed to the Chief Clerk of Proceedings but is sent to an office other than the Chief Clerk of Proceedings, the date filed or received shall be the date the request is received by the division. The request for hearing will be forwarded to the division’s Chief Clerk of Proceedings, but this may result in delay of processing the request. When a request for a hearing is not addressed to the Chief Clerk of Proceedings, it will not be considered filed or received by the division unless it is actually received by the Chief Clerk of Proceedings. Otherwise, a request for a hearing is deemed filed as of the date of the division date stamp placed on the document or other evidence of receipt.

As noted above, HCP’s DWC Form 49 was not received by the Chief Clerk of Proceedings until almost three months after the final date on which it could be filed in accordance with the Texas Administrative Code.

D. ALJ’s Analysis

The ALJ finds that the HCP failed to timely file a Request for a Contested Case Hearing with the Chief Clerk of Proceedings; therefore, SOAH cannot grant relief to HCP for the services in dispute.

⁸ See Petitioner’s Ex. A at 52. The record does not show when HCP actually mailed his DWC Form 49 to the Division, but the record does show that the Division did not receive a complete DWC Form 49 until well after 20 days after the conclusion of the MFBRC, as discussed below.

III. FINDINGS OF FACT

1. Petitioner (HCP) sought recovery from Carrier (Respondent) of charges in the amount of \$276.03 related to a new patient office visit by a person involved in a work-related injury on (Date of Injury).
2. Respondent declined to pay the requested \$276.03.
3. HCP requested a Medical Fee Benefit Review Conference (MFBRC) to address his claim.
4. The MFBRC was concluded on April 11, 2018, finding in favor of Respondent.
5. HCP signed his request to appeal the Medical Fee Dispute Decision to the State Office of Administrative Hearings (SOAH) (also referred to as a DWC Form 49) on May 4, 2018, which was 23 days after the conclusion of the MFBRC.
6. The Texas Department of Insurance, Division of Workers' Compensation (Division's) Chief Clerk of Proceedings received HCP's DWC Form 49 on July 31, 2018.
7. On August 15, 2018, the Division filed a Notice of Administrative Hearing (Notice) with SOAH that was served on Petitioner and Respondent. The Notice identified July 31, 2018, as the date the Request to Schedule a Medical Contested Case Hearing was received from Petitioner.
8. The Notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
9. On October 29, 2018, Administrative Law Judge Steven Neinast convened the hearing on the merits in this docket at SOAH in Austin, Texas. Petitioner represented himself via telephone. Attorney RJ represented Respondent in person. The record closed on November 6, 2018, when Petitioner filed additional documentation regarding his communications with, or attempted communications with, the Division and Respondent.
10. On October 29, 2018, Respondent filed a Motion to Dismiss for Lack of Jurisdiction, contending that SOAH does not have jurisdiction to hear this case because Petitioner's DWC Form 49 was filed more than 20 days after conclusion of the MFBRC because and Petitioner did not file his DWC Form 49 with the Division's Chief Clerk of Proceedings.

11. On October 30, 2018, Respondent filed an Amended Motion to Dismiss for Lack of Jurisdiction in which it raised the same points raised in its October 29, 2018 Motion to Dismiss.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order addressing Respondent's Amended Motion to Dismiss for Lack of Jurisdiction. Tex. Lab. Code §§ 413.031, .0311; Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided the parties. Tex. Gov't Code §§ 2001.051-.052.
3. If a medical fee dispute remains unresolved after an MFBRC, a health care provider may request a contested case hearing before SOAH by filing a written request with the Division's Chief Clerk of Proceedings not later than 20 days after the conclusion of the MFBRC. 28 Tex. Admin. Code § 133.307(g)(2)(A).
4. When a request for a hearing is not addressed to the Division's Chief Clerk of Proceedings, it is not considered filed or received until it is received by the Chief Clerk of Proceedings. 28 Tex. Admin. Code § 148.3(c).
5. The request for a contested case hearing before SOAH was not timely filed by Petitioner with the Chief Clerk of Proceedings; therefore, HCP is not entitled to any relief from SOAH. 28 Tex. Admin. Code §§ 148.3(c), 133.307(g)(2)(A).

ORDER

It is ORDERED that Respondent is not required to reimburse Petitioner for any additional charges for the services rendered to the injured worker on (Date of Injury)

NON-PREVAILING PARTY DETERMINATION

Texas Labor Code § 413.0312(g) and 28 Texas Administrative Code § 133.307(h) require the non-prevailing party to reimburse the Division for the cost of services provided by SOAH. Texas Labor Code § 413.0312(i) requires SOAH to identify the non-prevailing party and any costs of service provided by SOAH in its final decision. For purposes of Texas Labor Code § 413.0312, HCP is the non-prevailing party. The costs associated with this decision are set forth in the Statement of Costs attached to this Decision and Order and are incorporated herein for all purposes.

SIGNED December 7, 2018.

**STEVEN H. NEINAST
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**