

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

_____,
PETITIONER

v.

**NEW HAMPSHIRE INSURANCE CO.,
RESPONDENT**

DECISION AND ORDER

An Administrative Law Judge (ALJ) with the Texas Department of Insurance, Division of Workers' Compensation (Division) denied _____ reimbursement of about \$39,000.00 in out-of-pocket medical expenses because his request for medical fee dispute resolution was too late—more than one year after his out-of-pocket medical expenses were incurred and more than 60 days after a prior administrative decision determined that his injury was compensable. Mr. _____ now appeals that decision to the State Office of Administrative Hearings (SOAH). After holding a hearing and considering the evidence and the applicable law, the SOAH ALJ concludes that Mr. _____ is not entitled to

additional reimbursement because his request for medical fee dispute resolution was untimely.

I. PROCEDURAL HISTORY

In [REDACTED], [REDACTED] was injured while working for [REDACTED], and in December 2020, the Division issued a decision concluding that Mr. [REDACTED] suffered a compensable injury and was entitled to workers' compensation benefits. In April 2022, the Division issued another decision, concluding that Mr. [REDACTED] was not entitled to reimbursement of about \$39,000.00 in out-of-pocket medical expenses incurred after the injury. Mr. [REDACTED] appealed to SOAH for a contested case hearing about the matter. On November 16, 2022, a hearing was held before SOAH ALJ Andrew Lutostanski. Mr. [REDACTED] represented himself. Attorney Steven M. Tipton represented the insurance carrier, New Hampshire Insurance Company. Afterward the parties filed exhibits and closing arguments, and the record closed on December 16, 2022.

II. APPLICABLE LAW

Medical fee disputes are governed by the Division's billing, audit, and payment rules.¹ Certain parties may request medical fee dispute resolution.² Mr. [REDACTED] may request medical fee dispute resolution because he is an injured employee in a dispute with his insurance carrier about reimbursement for medical

¹ See 28 Tex. Admin. Code ch. 133. Citations reflect the law in effect at the time of the claim.

² 28 Tex. Admin. Code § 133.307(b).

expenses he paid for.³ A requestor must timely file the request for medical fee dispute resolution with the Division or the requestor waives the right to medical fee dispute resolution.⁴ A request must be “filed no later than one year after the date(s) of service in dispute,” unless an exception applies.⁵ One exception to the one-year deadline is when a related compensability, extent of injury, or liability dispute under Labor Code Chapter 410 has been filed.⁶ Then the “medical fee dispute shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury, or liability.”⁷

The Division deems a request filed on the date it receives the request.⁸ Unless the great weight of evidence indicates otherwise, the Division deems the received date for written communications sent by the Division that require the recipient to perform an action by a specific date after receipt to be the earliest of: (1) five days after the date mailed via United States Postal Service regular mail, (2) the first working day after the date the written communication was placed in an insurance carrier’s Austin representative’s electronic box, or (3) the date faxed or electronically transmitted.⁹

³ 28 Tex. Admin. Code § 133.307(b)(3).

⁴ 28 Tex. Admin. Code § 133.307(c)(1).

⁵ 28 Tex. Admin. Code § 133.307(c)(1)(A).

⁶ 28 Tex. Admin. Code § 133.307(c)(1)(B)(i).

⁷ 28 Tex. Admin. Code § 133.307(c)(1)(B)(i).

⁸ 28 Tex. Admin. Code § 133.307(c)(1).

⁹ 28 Tex. Admin. Code § 102.5(d).

The Division will review a request for medical fee dispute resolution and take appropriate action, including issuing a decision.¹⁰ A request for medical fee dispute must include the date of the injury, the dates of the services in dispute, a description of the services paid, the amount paid by the injured employee, and the amount of the medical fee in dispute.¹¹ A party to a medical fee dispute may seek review of a Division decision by first requesting a benefit review conference.¹² If after that the matter still remains unresolved, a party may appeal by requesting a contested case hearing before SOAH.¹³ The party seeking review of the medical fee dispute resolution decision has the burden of proof by the preponderance of the evidence.¹⁴

III. EVIDENCE

In [REDACTED], Mr. [REDACTED] led an emergency response team for [REDACTED].¹⁵ Wearing heavy firefighting gear and a breathing apparatus weighing about 90 pounds, he went to the scene of an unknown odor at a petrochemical manufacturing complex, found a flammable product pump leak, and used hand tools to stop the leak.¹⁶ Afterward he felt burning pain in his neck and back and went home and rested on the floor.¹⁷ He reported his injury.¹⁸ His insurance carrier

¹⁰ 28 Tex. Admin. Code § 133.307(f).

¹¹ 28 Tex. Admin. Code § 133.307(c)(4).

¹² 28 Tex. Admin. Code § 133.307(g)(1).

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

¹⁴ *Patients Med. Ctr. v. Facility Ins. Corp.*, 623 S.W. 3d 336, 343 (Tex. 2021); 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 148.14(b).

¹⁵ Resp. Ex. 6.

¹⁶ Resp. Ex. 6.

disputed whether Mr. [REDACTED] sustained a compensable injury at work and suffered a disability as a result.¹⁹

In late 2020, the Division held a hearing about whether Mr. [REDACTED] sustained a compensable injury and suffered a resulting disability.²⁰ Afterward, in December 2020, a Division ALJ found in favor of Mr. [REDACTED] and ordered the carrier to pay him workers' compensation benefits.²¹ The decision did not warn Mr. [REDACTED] that, because his injury was compensable, according to 28 Texas Administrative Code § 133.307(c)(1)(B)(i) he had until no later than 60 days after the date he received the decision to file a medical fee dispute with the Division.²²

A couple months later, on February 22, 2021, the Division mailed Mr. [REDACTED] and the carrier notice that the Division ALJ's decision had become final.²³ The notice told the parties that if they were not satisfied with the decision they could appeal to district court.²⁴ The notice did not mention 28 Texas Administrative Code § 133.307(c)(1)(B)(i) or the need to file a medical fee dispute with the Division no later than 60 days after the date of receiving the decision.²⁵

¹⁷ Resp. Ex. 6.

¹⁸ Resp. Ex. 6.

¹⁹ Resp. Ex. 6.

²⁰ Resp. Ex. 6.

²¹ Resp. Ex. 6.

²² Resp. Ex. 6.

²³ Resp. Ex. 1.

²⁴ Resp. Ex. 1.

²⁵ Resp. Ex. 1.

In March 2021, Mr. [REDACTED] requested that the carrier reimburse him for medical expenses he had incurred and provided the carrier a list of medical expenses.²⁶ He also requested assistance from the Division’s Office of Injured Employee Counsel in communicating with the carrier because they had been unresponsive.²⁷ A month later, on April 26, 2021, Mr. [REDACTED] filed a complaint with the Division, stating the carrier “failed to respond to request for reimbursement of out-of-pocket medical expenses within 45 days.”²⁸

Months passed. In August 2021, Mr. [REDACTED]’s then-attorney requested that the carrier reimburse Mr. [REDACTED] for medical expenses.²⁹ In November 2021, Mr. [REDACTED] filed another complaint with the Division, this time stating that his insurance carrier “will not provide a reasonable way to apply for reimbursement of out-of-pocket medical expenses” and instead required a particular form.³⁰

Eventually, on December 16, 2021, Mr. [REDACTED] filed a request with the Division for assistance on a “medical fee dispute.”³¹ Mr. [REDACTED] noted he sought “medical fee reimbursement” from his carrier and said his claim was delayed because the carrier told him he had to use a particular form and because the carrier ignored a letter from his attorney requesting reimbursement of out-of-pocket medical expenses.³² Mr. [REDACTED] included an itemized list of medical expenses.³³

²⁶ Pet. Ex. 4.

²⁷ Pet. Ex. 2.

²⁸ Pet. Ex. 7.

²⁹ Pet. Ex. 9.

³⁰ Pet. Ex. 11.

³¹ Pet. Ex. 12.

³² Pet. Ex. 12.

Nearly all of the expenses were incurred in 2018, 2019, and early 2020; there were only a few from December 2020 or later.³⁴

In response to Mr. [REDACTED]'s request for medical fee dispute resolution, the Division notified the carrier of the medical fee dispute, and then a Division ALJ issued a decision about the disputed out-of-pocket medical expenses.³⁵ The Division ALJ concluded that, for nearly all of the medical expenses involved, Mr. [REDACTED] was not entitled to reimbursement because his request for medical dispute fee resolution was too late—more than a year after the medical expenses were incurred and more than 60 days after receipt of the December 2020 decision on compensability.³⁶ Mr. [REDACTED] appealed the Division ALJ's decision to SOAH for this contested case hearing.

IV. ANALYSIS

Under the Division's rules, Mr. [REDACTED]'s request for reimbursement of out-of-pocket medical expenses was untimely.

Generally, a request for medical fee dispute resolution must be “filed no later than one year after the date(s) of service in dispute.”³⁷ Although Mr. [REDACTED] filed complaints with the Division in April and November 2021, neither complaint

³³ Pet. Ex. 12.

³⁴ Pet. Ex. 12.

³⁵ Pet. Ex. 5.

³⁶ Pet. Ex. 5.

³⁷ 28 Tex. Admin. Code § 133.307(c)(1)(A).

requested medical fee dispute resolution: the April complaint was about the carrier's failure to respond to a request for reimbursement, and the November complaint was about the carrier making the reimbursement process difficult by requiring a particular form. And neither complaint had the features of a request for medical fee dispute resolution: the dates of the services in dispute, a description of the services paid, the amount paid by the injured employee, and the amount of the medical fee in dispute.³⁸ Rather, a preponderance of the evidence shows that Mr. [REDACTED] first requested medical fee dispute resolution on December 16, 2021, when he told the Division he had a medical fee dispute with the carrier and provided the dates of the services in dispute, a description of the services, and the amounts paid. The Division's ALJ therefore correctly determined that Mr. [REDACTED]'s request for medical fee dispute resolution concerning out-of-pocket medical expenses incurred before December 16, 2020, was untimely under the general one-year deadline.

Mr. [REDACTED]'s request for medical fee dispute resolution was also untimely under the applicable exception. Here an exception applied because there was a related compensability dispute: the December 2020 decision concluded Mr. [REDACTED]'s injury was compensable.³⁹ As a result, Mr. [REDACTED] had more than the usual one year after date of service to file a request for medical fee dispute resolution; he had until "not later than 60 days after the date the requestor receives the final decision . . . on compensability."⁴⁰ Mr. [REDACTED] was deemed to have received the December 2020 decision a few days after it was mailed, and he does

³⁸ See 28 Tex. Admin. Code § 133.307(c)(4).

³⁹ 28 Tex. Admin. Code § 133.307(c)(1)(B)(i); Resp. Ex. 6.

⁴⁰ 28 Tex. Admin. Code § 133.307(c)(1)(B)(i).

not dispute timely receiving it or the February 2021 notice informing him that 60 days had passed and the December 2020 decision was final. So Mr. [REDACTED] had until February 2021 to file his request for medical fee dispute resolution. He didn't file by then. He first requested medical fee dispute resolution in December 2021.

Mr. [REDACTED] argues that he has much experience in workers' compensation—having even written a book on it—and “if someone as well versed in the workers' compensation system cannot prevail in this matter, what hope does the average injured worker have?”⁴¹ Although the fairness of a labyrinthine workers' compensation system can be questioned, ultimately its existence and structure is a question for the Texas Legislature and for the Commissioner of Insurance.⁴² The ALJ only applies the law as it is. Because Mr. [REDACTED]'s request for resolution was untimely, he is not entitled to reimbursement of his out-of-pocket medical expenses involved in this appeal.

⁴¹ Pet. Closing Br.

⁴² Tex. Const. art. 3, § 1 (the lawmaking power of the people is vested in our state legislature); Tex. Lab. Code § 413.031(f) (“The commissioner by rule shall specify the appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement.”).

V. FINDINGS OF FACT

1. [REDACTED] worked for [REDACTED].
2. In [REDACTED], Mr. [REDACTED] was injured while working at [REDACTED] when he went to the scene of an unknown odor at a petrochemical manufacturing complex, found a flammable product pump leak, and used hand tools to stop the leak.
3. His insurance carrier, New Hampshire Insurance Company (the carrier), disputed that Mr. [REDACTED] sustained a compensable injury at work and suffered a disability as a result.
4. On December 14, 2020, an Administrative Law Judge (ALJ) with the Texas Department of Insurance, Division of Workers' Compensation (Division) issued a decision in Mr. [REDACTED]'s favor, concluding he sustained a compensable injury, suffered a resulting disability, and was entitled to workers' compensation benefits.
5. Mr. [REDACTED] received the final decision on compensability, extent of injury, or liability on or about December 19, 2020.
6. In February 2021, Mr. [REDACTED] received a notice from the Division that the December 2020 decision was final.
7. In March 2021, Mr. [REDACTED] requested that the carrier reimburse him for medical expenses he had incurred and provided the carrier a list of medical expenses.
8. On April 26, 2021, Mr. [REDACTED] filed a complaint with the Division, stating the carrier failed to respond to his request for reimbursement of out-of-pocket medical expenses within 45 days.
9. In August 2021, Mr. [REDACTED]'s then-attorney requested that the carrier reimburse Mr. [REDACTED] for medical expenses.
10. In November 2021, Mr. [REDACTED] filed another complaint with the Division, this time stating that his insurance carrier would not provide a reasonable

way to apply for reimbursement of out-of-pocket medical expenses and instead required a particular form.

11. Mr. [REDACTED] first filed a request for medical fee dispute resolution with the Division on December 16, 2021. He included an itemized list of medical expenses. Nearly all of the expenses were for services in 2018, 2019, and early 2020. Only three were for services from December 16, 2020, or later.
12. A Division ALJ issued a decision about the disputed out-of-pocket medical expenses. The Division ALJ concluded that, for nearly all of the medical expenses involved, Mr. [REDACTED] was not entitled to reimbursement because his request for medical dispute fee resolution was too late.
13. Mr. [REDACTED] timely appealed the decision to the State Office of Administrative Hearings (SOAH). He seeks reimbursement of about \$39,000.00 in out-of-pocket medical expenses.
14. On August 30, 2022, the Division referred the matter to the SOAH for a hearing and issued a notice of hearing.
15. On September 8, 2022, SOAH sent the parties an order scheduling the hearing.
16. Together, the Division's notice of hearing and the SOAH order scheduling the hearing 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 either 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.
17. On November 15, 2022, a hearing was held before SOAH ALJ Andrew Lutostanski. Mr. [REDACTED] represented himself. Attorney Steven M. Tipton represented the carrier. The record closed on December 16, 2022, after receiving the parties' written closing arguments.

VI. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. Tex. Lab. Code §§ 413.031, .0311; Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided to the parties. Tex. Gov't Code §§ 2001.051-.052.
3. As the party seeking relief, Mr. [REDACTED] had the burden of proof, including the burden to prove it timely filed his request for medical fee dispute resolution. *Patients Med. Ctr. v. Facility Ins. Corp.*, 623 S.W. 3d 336, 343 (Tex. 2021); 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 148.14(b).
4. A requestor must timely file the request with the Division or waive the right to medical fee dispute resolution. 28 Tex. Admin. Code § 133.307(c)(1).
5. A request for medical fee dispute resolution must be filed no later than one year after the date of service in dispute unless an exception applies. 28 Tex. Admin. Code § 133.307(c)(1)(A).
6. When a related compensability, extent of injury, or liability dispute under Labor Code Chapter 410 has been filed, the medical fee dispute shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury, or liability. 28 Tex. Admin. Code § 133.307(c)(1)(B)(i).
7. Mr. [REDACTED]'s request for medical fee dispute resolution was untimely. He therefore waived his claims for reimbursement of out-of-pocket medical expenses for services provided before December 16, 2020.

VII. ORDER

Mr. [REDACTED] is not entitled to additional reimbursement from the carrier for his out-of-pocket medical expenses because he waived his claims.

VIII. NON-PREVAILING PARTY DETERMINATION

Section 413.0312(g) of the Texas Labor Code 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. Section 413.0312(i) requires SOAH to identify the non-prevailing party and any costs provided by SOAH in its final decision. For purposes of section 413.0312 of the Texas Labor Code, Mr. [REDACTED] is the non-prevailing party. The costs associated with this decision are set forth in Attachment A to this Decision and Order and are incorporated herein for all purposes.

Signed: February 13, 2023.

ALJ Signature:

Andrew Lutostanski

Presiding Administrative Law Judge