

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUE

A contested case hearing was held on September 13, 2010, to decide the following disputed issues:

1. Is the preponderance of the evidence contrary to the decision of Medical Fee Dispute Resolution Findings and Decision that (Subclaimant), Petitioner, is not entitled to reimbursement of a total of \$300.00 for the compensable injury of _____?

Upon a finding of good cause by the hearing officer the following issue was added:

2. Does (Subclaimant) have standing to assert subclaimant status?

PARTIES PRESENT

Claimant did not appear and his appearance was waived by the parties. Petitioner appeared by telephone and was represented by attorney CF. Respondent appeared and was represented by attorney RS.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____. Petitioner represented by attorney CF is seeking reimbursement of \$300.00. Petitioner sought Medical Dispute Resolution (MDR). On April 13, 2010, a Medical Fee Dispute Resolution Findings and Decision (MFDRFD) was issued by a Medical Fee Dispute Officer. The auditor's findings were:

1. The services in dispute relate to an injury that occurred on _____; therefore, a data match under Tex. Lab. Code Ann. §402.084(c-3) was required by Tex. Lab. Code Ann. §409.0091(s). No documentation was provided to sufficiently support that a data match occurred in March 2006 as stated in the affidavit. Therefore, the requestor is not eligible to file for reimbursement under Tex. Labor Code Ann. §409.0091.
2. The requestor was not eligible for reimbursement because the request was not filed in the form and manner prescribed by the Division. Tex. Lab. Code Ann. §409.0091(f);
3. The request for dispute resolution was filed later than the one year filing deadline and the documentation was insufficient to show compliance with 28 Tex. Admin. Code §140.6(d), Tex. Lab.Code Ann. §409.009 and 28 TAC Section 133.307.

On April 26, 2010, Petitioner requested a medical fee contested case hearing by submitting a DWC045A asserting that he was an attorney acting in behalf of a subclaimant “Health Care Insurer.” Petitioner conceded that it originally filed for reimbursement under the name (Subclaimant), and filed a claim with the wrong insurance carrier ACE USA/ESIS. CF asserted that Petitioner was now asserting subclaimant status in behalf of Unicare Life & Health Insurance Company.

With regard to the issue of standing, “standing” is defined as “a party’s right to make a legal claim or seek judicial enforcement of a duty or right.” (Black’s Law Dictionary, 7th edition). The general test for standing in Texas requires that there “(a) shall be a real controversy between the parties, which (b) will be actually determined by the judicial declaration sought.” See Tex. Ass’n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 446 (Tex. 1993), citing Board of Water Engineers v. City of San Antonio, 283 S.W.2d 722, 724 (Tex. 1955).

A health care insurer may proceed as a subclaimant under §409.009 or §409.0091 of the Act to seek reimbursement of the cost of health care for which it paid from a workers’ compensation insurance carrier if the services provided are for a compensable injury.

Section 409.009 of the Act provides:

SUBCLAIMS: A person may file a written claim with the Division as a subclaimant if the person has:

- (1) provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and
- (2) sought and been refused reimbursement from the insurance carrier.

The evidence presented failed to establish that Petitioner was a health care insurer and the evidence failed to establish that Petitioner provided any compensation to Claimant, either directly or indirectly. Petitioner has failed to meet the definition of subclaimant under §409.009; therefore, it has no standing to proceed under this section of the Act.

With respect to standing pursuant to Sec. 409.0091, this section provides as follows:

Sec. 409.0091 REIMBURSEMENT PROCEDURES FOR CERTAIN ENTITIES:

- (a) In this section, “health care insurer” means an insurance carrier and an authorized representative of an insurance carrier, as described by Section 402.084(c-1).
- (b) This section applies only to a request for reimbursement by a health care insurer.
- (c) Health care paid by a health care insurer may be reimburseable as a medical benefit.

Section 409.0091 expressly includes the authorized representative of a health care insurer as an entity that can attain subclaimant status under its provisions. Pursuant to Acts 2007, 80th Leg.,

R.S., Ch. 1007 (HB724) §11 effective September 1, 2007, Section 409.0091 only applies to dates of injury on or after September 1, 2007, except as provided in subsection (s):

(s) On or after September 1, 2007, from information provided to a health care insurer before January 1, 2007, under Section 402.084(c-3), the health care insurer may file not later than March 1, 2008:

(1) a subclaim with the Division under Subsection (1) if a request for reimbursement has been presented and denied by a workers' compensation insurance carrier; or

(2) a request for reimbursement under Subsection (f) if a request for reimbursement has not previously been presented and denied by the workers' compensation insurance carrier.

Petitioner's affidavit was not admitted and CF's assertions, without being sworn testimony, were insufficient to establish that he was an authorized representative of a health care insurer. All the evidence really established was that at the most, Petitioner's status was that of a collector, and not a health care insurer. Nevertheless, the provisions of Texas Labor Code Ann. §409.0091(s) provide that a data match had to have occurred before January 1, 2007, in order that Petitioner may file for reimbursement from Respondent. Petitioner did not provide documentation to support its contention that a data match occurred before January 1, 2007, and Petitioner is not eligible to file for reimbursement from Respondent under Texas Lab. Code Ann. §409.0091(s).

Petitioner did not provide documentation to support its request for reimbursement was filed before March 1, 2008. Texas Lab. Code Ann. §409.0091(s) states that if information was provided to a health care insurer before January 1, 2007, under Texas Labor Code Ann. §402.084(c-3), the health care insurer may file for reimbursement from the workers' compensation carrier not later than March 1, 2008, and may file a subclaim with the Division if the request for reimbursement has been presented and denied no later than March 1, 2008. Petitioner is not eligible to file for reimbursement from Respondent because Petitioner did not provide documentation to support its request for reimbursement was filed before March 1, 2008.

Texas Lab. Code Ann. §409.0091(f) relates to the form and manner in which the health care insurer shall file for reimbursement from the workers' compensation insurance carrier. The Division prescribed a form entitled Reimbursement Request for Payment Made by Health Care Insurer (DWC-026) to meet the requirements under Texas Lab. Code Ann. §409.0091(f). The DWC-026 requires pertinent information, including dates of service and a description of services. Petitioner did not provide documentation to support that it included a DWC-026 in its request for reimbursement. Petitioner is not eligible for reimbursement because the request was not filed in the form and manner as required under Texas Lab. Code Ann. §409.0091(f).

Since Petitioner's exhibits were not admitted due to failure to timely exchange, Petitioner has not submitted any relevant evidence that would support a claim as a subclaimant and support its entitlement to the benefits sought. Based on the probative evidence the preponderance of the evidence is not contrary to the decision of the MFDRFD that Petitioner is not entitled to reimbursement of a total of \$300.00 for the compensable injury of _____.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. The parties stipulated to the following facts:
 - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On _____, Claimant was the employee of (Employer), and sustained a compensable injury.
2. Carrier delivered to Petitioner a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Claimant did not appear at the medical contested case hearing on September 13, 2010, and her appearance was waived by the Petitioner and Respondent.
4. On April 13, 2010, the Medical Fee Dispute Resolution Findings and Decision determined that (Subclaimant), Petitioner, is not entitled to reimbursement of a total of \$300.00 for the compensable injury of _____.
5. Petitioner did not file for dispute resolution in accordance with Tex. Lab. Code Ann. §§ 409.009, 409.0091, and 28 Tex. Admin. Code §§140.6, 140.8.
6. Petitioner's request is not eligible for medical fee dispute resolution under 28 Tex. Admin. Code §133.307.
7. Petitioner is not eligible to file for reimbursement from the Respondent under Tex. Lab. Code Ann. §409.0091.
8. Petitioner did not file for reimbursement from Respondent in a timely manner as defined by Tex. Lab. Code Ann. §409.0091(s).
9. Petitioner did not file for reimbursement from Respondent in the form and manner prescribed by Tex. Lab. Code Ann. §409.0091(f).

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of Medical Fee Dispute Resolution Findings and Decision that (Subclaimant), Petitioner, is not entitled to reimbursement of a total of \$300.00 for the compensable injury of _____.
4. Petitioner does not have standing to assert a claim under Tex. Labor Code Ann. 409.009 or §409.0091.

DECISION

(Subclaimant), Petitioner, is not entitled to reimbursement of a total of \$300.00 for the compensable injury of _____. Petitioner does not have standing to assert a claim under Tex. Labor Code Ann. 409.009 or §409.0091.

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury of _____, in accordance with Texas Labor Code Ann. §408.021.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TX 78701-3232**

Signed this 24th day of September, 2010

Cheryl Dean
Hearing Officer