APPEAL NO. 990518

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 18, 1999, a contested case hearing (CCH) was held. The issue concerned a matter relating to a third party recovery that the appellant (claimant) had obtained in a court proceeding resulting from his injury. The respondent (carrier) subsequently asserted a right to subrogation. The issue was whether the claimant had exhausted an advance that was attributed to a $25,000.00 Compromise Settlement Agreement (CSA) entered into with the carrier to resolve its subrogation claim. The CCH was held to compute whether the benefits due to claimant had met or exceeded that agreement.

The hearing officer determined that the "advance" had been exhausted, and that the carrier owed the claimant $1,380.59. This was essentially the agreement worked out by the parties at the CCH. The hearing officer found she had no jurisdiction to review the validity of the CSA.

The claimant appeals. Claimant argues that the hearing officer should have added an issue concerning the validity of the CSA, which the claimant asserts was forged. The carrier responds that the hearing officer correctly determined that she does not have jurisdiction to adjudicate the validity of an agreement filed in a court.

DECISION

Affirmed.

There were numerous proceedings held in various aspects of claimant's claim. Concerning the matter of subrogation, it was explained that the claimant had filed a third party lawsuit against numerous defendants and, according to the carrier's attorney, settled the matter with those parties. The carrier found out about the proceeding and asserted its right, under Section 417.002, to subrogation to the extent of benefits it paid or would pay out for workers' compensation. As the CCH in this case progressed, it became apparent that claimant was opposed to subrogation in general because he had not actually been paid any money directly as a result of the third party suit. He further asserted that the CSA was a forgery (it was signed by him and his wife and their attorney at the time, who was not the attorney at the CCH).

The claimant had sought to add the issue of the validity of the CSA by a pro se motion dated May 26, 1998. The hearing officer responded in an order dated May 27, 1998, by denying addition of the issue, but for the reason that it was already subsumed (included) in the issue relating to exhaustion of the credit. However, by the February 1999 CCH, the hearing officer stated that she could not adjudicate the validity of the CSA or the carrier's right to subrogation. The claimant's attorney at the CCH agreed with this and said that the recourse that they would follow would be to file a bill of review raising the validity of the CSA.

The carrier agreed at the CCH that the claimant had exhausted the amount of the agreed third party CSA and that it owed a balance. The claimant's attorney sought an agreement that this did not mean that claimant was giving up his rights to dispute the CSA in a another forum.

During the CCH, it became apparent that claimant also did not agree that the carrier should have subrogation if claimant himself were not paid money from the third party suit. He further became engaged in a dispute with his attorney and the hearing officer as to whether he was entitled to supplemental income benefits (SIBS) for the 17th quarter. Claimant maintained that, notwithstanding an order and Appeals Panel decision finding him not entitled to SIBS for this quarter, an ancillary agreement after the fact had been reached with the hearing officer and his attorney in attendance. This was respectfully denied by the attorney, who pointed out that the agreement in which he had been involved was for earlier quarters of SIBS, not the 17th quarter. The claimant nevertheless maintained that there was such an agreement whether his attorney was involved or not.

We agree that the hearing officer did not err by declining to adjudicate the validity of the CSA. Moreover, it does not appear that the matter was preserved at the hearing for appeal because the claimant and his attorney agreed at the CCH that this issue would be handled in another forum, specifically a bill of review proceeding in the court of competent jurisdiction. We will note, however, that the right to subrogation of the carrier (for reimbursement of income and medical benefits that have been paid or will be payable) does not derive from any agreement, but from the statute itself, notably Section 417.002. The only function of the CSA in this case would appear to be to fix the amount in question, not to establish the right to subrogation. Indeed, it has been held that the basic right of the carrier to reduce its liability due to the payment by a third party must not be compromised. American General Fire & Casualty Company v. McDonald, 796 S.W.2d 201, 204 (Tex. App.-San Antonio 1990, writ denied).

We accordingly affirm the hearing officer's decision and order.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Alan C. Ernst
Appeals Judge