

APPEAL NO. 000455

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 1, 2000. The hearing officer determined that the respondent (carrier) was entitled to a statutory subrogation lien in the amount of the appellant's (claimant) recovery from a third party. The claimant appeals this determination, expressing his disagreement with it. The carrier replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury in a motor vehicle accident on _____. The carrier disputed various issues until resolved in hearings in 1995, 1996, and 1999. Eventually, the carrier paid \$19,875.76 for temporary income benefits and impairment income benefits. As of the CCH, the carrier had not yet paid any medical benefits. Such benefits have been largely paid by the claimant's group health insurance policy. The claimant reached a settlement agreement in the amount of \$4,233.75 with the party responsible for the motor vehicle accident. The carrier asserts a statutory subrogation lien in this amount for presently accrued but include unpaid benefits and for future medical benefits.

Section 417.002(a) provides that the "net amount recovered by a claimant in a third-party action shall be used to reimburse the insurance carrier for benefits, including medical benefits, that have been paid for the compensable injury." Amounts of the settlement in excess of benefits paid are considered "an advance against future benefits." There was no dispute that the \$4,235.75 represented the "net amount" of the claimant's settlement. He contended both at the CCH and again on appeal that he should be entitled to keep this money because of the carrier's long delay in paying any benefits, because of the "numerous problems" he encountered with this carrier, and because the carrier has yet to pay any medical benefits.

We assume that at least as of the CCH the only benefits remaining to be paid to the claimant were medical benefits. From the evidence presented there were medical bills which have been paid, but not by the carrier, medical bills still owed, and possible medical bills in the future. The hearing officer, consistent with Section 417.002, found that the carrier was entitled to a lien in the net amount of the settlement until medical bills are paid in this amount, at which time the carrier will again be liable for medical benefits. The claimant expressed his frustration at this provision of the 1989 Act and questioned its fairness. The hearing officer and we are bound by the law which provides for this subrogation lien.

Finding no error of law and sufficient evidence to support the decision and order of the hearing officer, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge