

APPEAL NO. 010977
FILED JUNE 5, 2001

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 January 24, 2001. The issues involved whether the respondent (carrier) could suspend benefits because of a district court judgment in its favor in an intervention action that it contended was a "third party" subrogation. The appellant (claimant) argued that the carrier was not in fact entitled under the 1989 Act to bring the subrogation action, that the matter has been appealed to the Court of Appeals, and that the Texas Workers' Compensation Commission (Commission) should thus not allow a suspension of income benefits under a void order. The carrier responded that the Commission had no jurisdiction to pronounce the order void, and that it should be allowed to suspend benefits. The hearing officer agreed, found no jurisdiction to overturn a district court order, and found that the carrier was entitled to suspend income benefits in conjunction with the lien created by the district court order allowing subrogation.

The claimant has appealed, and the carrier has responded, asserting the positions they asserted at the CCH. In addition, however, the claimant expresses concern at a statement of the hearing officer that the carrier did not demonstrate that the intervention had been made by the carrier paying workers' compensation benefits. The carrier responded that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

It was stipulated on the record (if not fully memorialized in the decision) that the claimant sustained injury to his cervical spine and upper left extremity on _____. It was further stipulated that he was involved in a nonwork-related motor vehicle accident (MVA) on May 15, 1998. The claimant subsequently brought suit against the driver of the other car and eventually received a \$165,000 settlement.

At the CCH, it was undisputed that the carrier intervened in this lawsuit and received an order, on summary judgment, granting it a subrogation interest in the settlement and against future benefits payable to the claimant. The name of the carrier identified as intervener in the district court proceedings was different than the name appearing as the carrier in this proceeding. However, on or about June 1, 2000, the claimant and the intervener carrier filed stipulations with the district court in which they agreed that the "intervener" had paid a total of \$31,624.99 in workers' compensation benefits to the date that the stipulations were signed. There was no challenge raised at the CCH as to the identity of the carrier herein with the intervener in the district court proceeding. However, the hearing officer *sua sponte* sought clarification from the carrier and received an answer that indicated that there are several related companies that are divisions or subsidiaries of essentially one insurance carrier.

The hearing officer did not err in holding that he had no authority to refuse to enforce the subrogation lien created by the judgment against the claimant's future benefits. He further did not err in declining to regard that order as void.

Because we agree that a carrier who did not pay workers' compensation benefits does not have a subrogation right, we will initially address the hearing officer's statement in his discussion that "[a]t the [CCH] and subsequent to the [CCH] the carrier was unable to demonstrate that the intervention was made by the carrier that was paying workers' compensation benefits." This statement is not accurate given the stipulation filed in the district court proceeding that agreed that the intervener had paid workers' compensation to the claimant. We would further note that during the CCH, there was no issue raised that the carrier in the Commission proceeding was not the intervener in the district court case, and the assumption throughout the argument and presentation of evidence was that they were the same.

The merits of the claimant's argument that the carrier was not entitled to subrogation, in that the driver of the other vehicle is not a "third party" as contemplated by Section 417.001, is a matter to be adjudicated in the district court or on appeal from that judgment. The claimant has not cited any authority which either requires a carrier to bring its subrogation claim first to the Commission or which allows the Commission to relitigate the merits of a subrogation claim already determined by a district court. The claimant's unpaid income benefits are subject to the lien created by the subrogation judgment. Section 408.203(a)(3). If the Commission were to decline to enforce the lien created by a district court order granting subrogation, the available funds for collecting the subrogation would diminish by the week, perhaps irreparably affecting the rights of the carrier. We note that any of the liens created under Section 408.203 could arguably have underlying meritorious arguments against the creation of the lien; nevertheless, the forum for adjudicating these matters is not the Commission.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual

Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge