

APPEAL NO. 020771
FILED MAY 22, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 23, 2002, with the record closing on February 25, 2002. The appellant, who is the employer (subclaimant herein), was actively pursuing this claim for Texas workers' compensation benefits as a subclaimant.

The hearing officer determined that (1) the claimant was an employee of the subclaimant under the 1989 Act; (2) the claimant sustained a compensable injury while working in Alabama; (3) the claimant was entitled to all rights and remedies under the 1989 Act; (4) the subclaimant timely filed notice of an injury in accordance with Section 409.005; (5) the claimant elected to pursue a remedy and recover compensation under the workers' compensation laws of the State of Alabama, thereby barring recovery under the 1989 Act; and (6) due to the claimant's election to pursue workers' compensation benefits under the laws of another jurisdiction, the subclaimant is not entitled to reimbursement of compensation and medical payments from the respondent (carrier).

The subclaimant appealed the hearing officer's determinations with regard to the claimant's election of remedies and the subclaimant's right to reimbursement of medical and compensation payments. The respondent (carrier) urges affirmance. The claimant did not file a response. The hearing officer's determinations with regard to the remaining issues were not appealed and are, therefore, final. Section 410.169.

DECISION

Affirmed as reformed.

ELECTION TO PURSUE BENEFITS IN ALABAMA

The hearing officer did not err in determining that the claimant elected to pursue a remedy and recover compensation under the workers' compensation laws of the State of Alabama, thereby barring recovery under the 1989 Act. Section 406.075 clearly provides as follows:

- (a) An injured employee who elects to pursue the employee's remedy under the workers' compensation laws of another jurisdiction and who recovers benefits under those laws may not recover under this subtitle.
- (b) The amount of benefits accepted under the laws of the other jurisdiction without an election under Subsection (a) shall be credited

against the benefits that the employee would have received had the claim been made under this subtitle.

It is undisputed that the claimant received workers' compensation benefits under the laws of the State of Alabama, where he was a resident. At issue is whether the claimant elected to pursue a remedy under the laws of that jurisdiction.

The evidence shows that the claimant was injured while working in Alabama. The claimant initially sought relief in Texas from the carrier, but the claim was denied by the carrier. Although the claimant stated that he "tried for two years to get the claim handled properly," we see no evidence that the claimant prosecuted his claim for benefits within the hearings system of the Texas Workers' Compensation Commission (Commission) or otherwise sought administrative recourse for the denial of Texas benefits.

Instead, the claimant hired an attorney in Alabama and prosecuted his claim under the workers' compensation laws of that jurisdiction, resulting in a favorable decision by an Alabama court. The court specifically found in its judgment that the subclaimant had coverage through a policy with the carrier in this case. Notwithstanding, the claimant stated, "I felt that I did not have a choice where to file due to the fact that Texas has denied my claim and my statute of limitations was about to expire in Alabama I simply filed in Alabama because that was the last alternative that I had." The hearing officer obviously did not credit any indication that the claimant was compelled to pursue the full range of his remedies in Alabama rather than Texas. Under the circumstances, the hearing officer, as sole judge of the weight and credibility of the evidence, could determine that the claimant "elects" to pursue compensation benefits in Alabama, as that term is used under Section 406.075(a). This determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The subclaimant asserts error in the hearing officer's admission of the late-exchanged Carrier's Exhibit Nos. 1 through 4. To obtain a reversal based on such an error, the subclaimant must show that not only was the admission of the evidence error but that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Upon review of the exhibits, we do not find that to be so in this case.

REIMBURSEMENT

The policy of the carrier is in evidence. Frankly, it appears that endorsement WC 42 03 07, an "Other States Endorsement," expressly states that the carrier will reimburse the subclaimant for amounts required to be paid as benefits in Alabama (which is not listed as one of the excluded states for this purpose). However, any laws or regulations of the Alabama workers' compensation system that might govern reimbursement were left undeveloped in the record.

In any case, the hearings system of the Commission is not a general court of law with the jurisdiction to adjudicate contract liability. Our jurisdiction is limited to consideration of issues relating to Texas workers' compensation benefits and any entitlement to reimbursement thereof. The hearing officer did not err in determining that the subclaimant is not entitled to reimbursement for workers' compensation and medical payments from the carrier because he also found that no benefits were due under the laws of Texas. The subclaimant's request for reimbursement is essentially a subrogation claim to those benefits. Because the claimant is barred from recovery under the 1989 Act, we conclude that the subclaimant, likewise, is not entitled to recovery under the 1989 Act, as a matter of law. A question of whether the subclaimant is entitled to reimbursement of Alabama benefits remains a question for another jurisdiction.

Accordingly, we amend the conclusions of law and order sections of the hearing officer's decision to read that the subclaimant is not entitled to reimbursement of any Texas workers' compensation and medical benefits, as none are due. The decision and order of the hearing officer are affirmed with such modification, making clear that the general question of reimbursement of Alabama benefits is not and cannot be decided by the Commission's hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL RAY OLIVER, PRESIDENT
221 W. 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.**

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge