

APPEAL NO. 081065-s
FILED SEPTEMBER 22, 2008

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 March 11, 2008. At the CCH on March 11, 2008, both respondent 2 (claimant) and respondent 1 (self-insured) appeared, but the appellant (subclaimant (CFHP)) did not appear. The hearing officer states in her decision that the claimant stated that she did not intend to pursue a workers' compensation claim and did not intend to appear for a subsequent CCH. The hearing officer issued a 10-day show cause letter to the subclaimant. The subclaimant responded to the 10-day show cause letter, and the hearing officer set a CCH for April 8, 2008. At the CCH on April 8, 2008, both the self-insured and the subclaimant appeared, but the claimant did not appear. The hearing officer issued a 10-day show cause letter to the claimant. The claimant did not respond to the 10-day show cause letter.

At the CCH on April 8, 2008, the issues before the hearing officer were:

- (1) Did the claimant sustain a compensable injury on _____?
- (2) Is the self-insured relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001?
- (3) Is the self-insured relieved from liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation with the Texas Department of Insurance, Division of Workers' Compensation (Division) within one year of the injury as required by Section 409.003?
- (4) Has the self-insured waived its right to contest compensability of the claimed injury by not timely contesting the injury in that it did not specifically state in the [Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1)] that its dispute was based upon the claimant's failure to timely file a claim for compensation within one year in accordance with Sections 409.021 and 409.022?
- (5) Does the (TTG) have standing to assert subclaimant status and/or pursue compensability of the claimed injury?
- (6) Does CFHP have legal standing to seek adjudication of a dispute when the self-insured has denied compensability and the claimant has declined to pursue a claim?

(7) Does TTG have good cause for its failure to appear for the proceeding scheduled to convene on March 11, 2008?

(8) Does the claimant have good cause for her failure to appear for the proceeding scheduled to convene on April 8, 2008?

The hearing officer determined that: (1) the claimant did not sustain a compensable injury on _____; (2) the self-insured is relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001; (3) the self-insured is relieved from liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation with the Division within one year of the injury as required by Section 409.003; (4) the self-insured has not waived its right to contest compensability of the claimed injury in that it did not specifically state in the PLN-1 that its dispute was based upon the claimant's failure to timely file a claim for compensation within one year in accordance with Sections 409.021 and 409.022; (5) CFHP does not have legal standing to seek adjudication of a dispute when the self-insured has denied compensability and the claimant has declined to pursue a claim, and it has no standing to appear as a party as it failed to register with the Division as a subclaimant; (6) TTG does not have standing to assert subclaimant status and/or pursue compensability of the claimed injury; (7) TTG does not have good cause for its failure to appear for the proceeding scheduled to convene on March 11, 2008; and (8) the claimant does not have good cause for her failure to appear for the proceeding scheduled to convene on April 8, 2008.

The subclaimant appeals the hearing officer's compensability, timely notice to the employer, timely filing of a claim, waiver, standing (CFHP and TTG), and no good cause for TTG's failure to appear determinations. Also, the subclaimant states that the hearing officer erred in adding the issues of whether TTG has standing to assert subclaimant status and/or pursue compensability of the claimed injury, and whether CFHP has legal standing to seek adjudication of a dispute when the self-insured has denied compensability and the claimant has declined to pursue a claim. Furthermore, the subclaimant states that the hearing officer erred in denying its motion for continuance and determining that TTG did not have good cause for its failure to appear at the March 11, 2008, CCH. The self-insured filed a response, urging affirmance of the hearing officer's decision. The appeal file does not contain a response from the claimant. The hearing officer's determination that the claimant does not have good cause for her failure to appear for the proceeding scheduled to convene on April 8, 2008, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

ADDITIONAL ISSUES AND DENIAL OF MOTION FOR CONTINUANCE

An abuse of discretion occurs when a decision is made without reference to any guiding rules or principles. See Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). On appeal, the subclaimant states that the hearing officer erred in adding the issues on standing as it relates to CFHP and TTG. In evidence is the self-insured's motion to add an additional issue with regard to whether TTG has standing to assert subclaimant status and/or pursue compensability of the claimed injury. The self-insured states in its motion that TTG purchased CFHP's account as it relates to the claimant's injury of _____, therefore CFHP "no longer has an interest in this claim, and it can only be stated that [TTG] is pursuing this claim." (Hearing Officer's Exhibit No. 4). In evidence is CFHP's response dated February 5, 2008, in which CFHP states that it objects to adding an issue on standing and "[i]f standing is going to be tried, [CFHP] requests a [benefit review conference (BRC)] on the issue." (Hearing Officer's Exhibit No. 6). In evidence is an Order Supplementing Statement of Disputes dated February 11, 2008, in which the hearing officer found good cause to add the issues of whether TTG has standing to assert subclaimant status and/or pursue compensability of the claimed injury, and whether CFHP has legal standing to seek adjudication of a dispute when the self-insured has denied compensability and the claimant has declined to pursue a claim. (Hearing Officer's Exhibit No. 7). 28 TEX. ADMIN. CODE § 140.1(4) (Rule 140.1(4)) defines "Party to a proceeding" as "[a] person entitled to take part in a proceeding because of a direct legal interest in the outcome." Rule 141.1(a) provides that a BRC may be requested "by a claimant, a subclaimant, a carrier, or an employer who has contested compensability." In this case, the hearing officer found good cause to add to the statement of disputes the issues of standing with respect to CFHP and TTG, given that the self-insured stated that CFHP "no longer has an interest in this claim" and TTG was pursuing this claim. The response from TTG did not indicate whether CFHP or TTG or both were a party (or parties) as defined in Rule 140.1(4). Rule 142.7(e) provides that additional disputes may be added by permission of the hearing officer "only on a determination of good cause." Review of the record shows that the hearing officer did not err in adding the issues of whether TTG has standing to assert subclaimant status and/or pursue compensability of the claimed injury, and whether CFHP has legal standing to seek adjudication of a dispute when the self-insured has denied compensability and the claimant has declined to pursue a claim.

Further, the subclaimant states that the hearing officer erred in denying its motion for continuance at the April 8, 2008, CCH. At the CCH on April 8, 2008, the subclaimant requested a continuance in order to subpoena the claimant to elicit testimony and the hearing officer denied its motion for continuance. In the Background Information section of the decision the hearing officer comments that "[p]rudence should have dictated that appropriate steps be taken to ensure" the claimant's appearance, as the claimant "obviously was uninterested in pursuing a workers' compensation claim." Further, the hearing officer states that if TTG had appeared at the March 11, 2008, CCH, it could have elicited testimony from the claimant. Review of the record shows that the hearing officer did not abuse her discretion in denying the subclaimant's motion for continuance.

FACTUAL SUMMARY

In evidence is an Employer's First Report of Injury or Illness (DWC-1) dated September 12, 2005, that indicates that the claimant sustained a low back strain on _____, and that the claimant reported the injury to her employer on September 9, 2005. In evidence is a PLN-1 from the self-insured dated September 20, 2005, denying "compensability of the entire claim" and asserting that the claimant did not timely report the injury to the employer. As previously mentioned, the claimant did not appear at the April 8, 2008, CCH to provide testimony in regard to her injury of _____. Also, there were no medical records in evidence of the claimant's injury of _____. There is in evidence a summary of payments made by CFHP to health care providers.

The subclaimant's attorney testified that the subclaimant received information about this claim from the Division under Section 402.084(c-3) in "late January 2007." In a letter dated August 25, 2007, TTG states that it represents CFHP and that CFHP, as a subclaimant, is requesting reimbursement of medical expenses from the self-insured that it paid in relation to the claimant's injury of _____. In a response dated December 5, 2007, the self-insured states that it is denying the request for reimbursement. The hearing officer states in her decision that the subclaimant's attorney testified that TTG did not purchase the accounts receivable from CFHP, but was paid only on a contingency basis if it was able to collect money from the self-insured. In evidence is a document dated March 3, 2008, which states that TTG is authorized and appointed as CFHP's representative "to prosecute the undersigned's claim for reimbursement of medical care and treatment expenses" as it relates to the claimant's injury of _____.

COMPENSABILITY, TIMELY NOTICE, TIMELY CLAIM FILING, WAIVER AND NO GOOD CAUSE

The hearing officer's determinations on the issues of compensability, timely notice to the employer, timely claim filing, waiver and no good cause for TTG's failure to appear at the CCH of March 11, 2008, are supported by sufficient evidence and are affirmed.

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). See also Appeals Panel Decision (APD) 080576-s, decided July 2, 2008. In this case, the issues of standing as a subclaimant for both TTG and CFHP were broadly worded and were not limited to the application of either Sections 409.0091 or 409.009.

On appeal, the subclaimant states that Section 409.0091 does not apply to this case, rather Section 409.009 applies. We agree. Under the facts of this case, Section 409.0091 does not apply because: (1) the claimant's date of injury is prior to September 1, 2007; (2) the subclaimant was provided information under Section 402.084(c-3) after January 1, 2007 (pertinent to the application of Section 409.0091(s)); and (3) the self-insured has denied compensability of the claim. See APD 080576-s, *supra*, for discussion of the applicability of Section 409.0091.

The hearing officer found that TTG is not an assignee or authorized representative of CFHP. In evidence is a [Division] EDI Trading Partner Application and Profile (EDI-01) form signed by the subclaimant's attorney on November 2, 2006, and by a CFHP representative on November 6, 2006, which allows TTG as an authorized representative to request information as provided in Section 402.084(c-3). Also, as previously mentioned, a document dated March 3, 2008, shows that TTG is the authorized representative of CFHP. The evidence establishes that TTG is the authorized representative of CFHP.

The hearing officer found that CFHP has no standing to appear as a party as it failed to register with the Division as a subclaimant. Section 409.0091(s) provides, in part, that a health care insurer may file a subclaim with the Division if a request for reimbursement has been presented and denied. As explained above, Section 409.0091 does not apply to the facts of this case. The hearing officer did not cite any further authority that a subclaimant "register" with the Division in order to have standing as a subclaimant. That portion of the hearing officer's decision, that CFHP has no standing to appear as a party as it failed to register with the Division as a subclaimant is against the great weight of the evidence and is reversed.

Given that Section 409.0091 does not apply, we analyze the standing issues under Section 409.009. Section 409.009 provides that 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. See APD 052857-s, decided February 8, 2006. As previously mentioned, a letter dated August 25, 2007, from TTG on behalf of CFHP to the self-insured states that it requested reimbursement for medical costs it paid in relation to the claimant's injury of _____. Attached to that letter is a summary of payments made by CFHP to health care providers which provided health care services to the claimant. In a response letter dated December 5, 2007, the self-insured denied CFHP's request for reimbursement stating that the claim was not compensable and attached a PLN-1 dated September 20, 2005, which denied compensability of the entire claim.

The evidence establishes that CFHP has met the requirements of Section 409.009. CFHP, as a health care insurer, provided compensation for the claimant and it sought and was refused reimbursement from the self-insured. Under the facts of this case, CFHP has legal standing.

We reverse the hearing officer's determination that CFHP does not have legal standing to seek adjudication of a dispute when the self-insured has denied compensability and the claimant has declined to pursue a claim, and it has no standing to appear as a party as it failed to register with the Division as a subclaimant, and we render a new decision that CFHP has standing to seek adjudication of a dispute when the self-insured has denied compensability and the claimant has declined to pursue a claim, pursuant to Section 409.009.

TTG does not have standing pursuant to Section 409.009. As previously mentioned, the subclaimant's attorney testified that TTG did not purchase the accounts receivable from CFHP, but was paid only on a contingency basis if it was able to collect money from the self-insured. TTG has not met the requirements of Section 409.009, because the evidence did not establish that TTG has provided compensation, directly or indirectly, to the claimant. Accordingly, we affirm the hearing officer's determination that TTG does not have standing to assert subclaimant status and/or pursue compensability of the claimed injury.

SUMMARY

We affirm the hearing officer's determinations on the issues of compensability, timely notice to the employer, timely claim filing, waiver and no good cause for TTG's failure to appear at the CCH of March 11, 2008. We affirm the hearing officer's determination that TTG does not have standing to assert subclaimant status and/or pursue compensability of the claimed injury. We reverse the hearing officer's determination that CFHP does not have legal standing to seek adjudication of a dispute when the self-insured has denied compensability and the claimant has declined to pursue a claim, and it has no standing to appear as a party as it failed to register with the Division as a subclaimant, and we render a new decision that CFHP has standing to seek adjudication of a dispute when the self-insured has denied compensability and the claimant has declined to pursue a claim, pursuant to Section 409.009. However, because the claimant is barred from recovering benefits under the 1989 Act, the subclaimant is similarly barred. APD 080576-s, *supra*.

The true corporate name of the insurance carrier is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**(SUPERINTENDENT)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge