

**DECISION AND ORDER**

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

**ISSUES**

A contested case hearing was held on November 17, 2010, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the Medical Fee Dispute Resolution Findings and Decision that (Subclaimant), Petitioner, is not entitled to reimbursement of a total of \$1517.87 for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Sub-Claimant appeared and was represented by CF, attorney. Claimant did not appear and her absence was waived by the parties. Respondent/Carrier appeared and was represented by JB, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury on \_\_\_\_\_. Petitioner represented by attorney CF is seeking reimbursement of \$1517.87. Petitioner sought Medical Dispute Resolution (MDR). On April 09, 2010, a Medical Fee Dispute Resolution Findings and Decision (MFDRFD) was issued by a Medical Fee Dispute Officer. The auditor's findings were:

1. The services in dispute relate to an injury that occurred on \_\_\_\_\_; therefore, a data match under Tex. Lab. Code Ann. §402.084(c-3) was required by Tex. Lab. Code Ann. §409.0091(s). No documentation was provided to sufficiently support that a data match occurred on March 31, 2006 as stated in the affidavit. Therefore, the requestor is not eligible to file for reimbursement under Tex. Labor Code Ann. §409.0091.
2. The requestor was not eligible for reimbursement because the request was not filed in the form and manner prescribed by the Division. Tex. Lab. Code Ann. §409.0091(f);
3. The request for dispute resolution was filed later than the one year filing deadline and the documentation was insufficient to show compliance with 28 Tex. Admin. Code §140.6(d), Tex. Lab.Code Ann. §409.009 and 28 TAC Section 133.307.

Petitioner requested a medical fee contested case hearing. Mr. CF asserted Petitioner was asserting subclaimant status on behalf of Unicare Life & Health Insurance Company.

Some of the medical services in dispute relate to Claimant's compensable injury on \_\_\_\_\_. Some of the medical services in dispute were performed prior to the date of injury. Services rendered before the date of injury are not reimbursable. To be eligible to file for reimbursement from Respondent/Carrier under Texas Labor Code Ann. §409.0091, Petitioner had to make a data match under Texas Labor Code Ann. §402.084(c-3) as required under Texas Labor Code Ann. §409.0091(s). Petitioner stated it was the authorized representative of the Unicare Life & Health Insurance Company. Petitioner did not provide documentation to support a data match occurred. Petitioner argued a data match was not required because these services were performed before the law changed on September 01, 2007. The provisions of Texas Labor Code Ann. §409.0091(s) are applicable to Petitioner's claim for reimbursement and a data match had to have occurred before January 1, 2007, in order that Petitioner may file for reimbursement from Respondent/Carrier. Petitioner did not provide documentation to support its contention that a data match occurred before January 1, 2007, and Petitioner is not eligible to file for reimbursement from Respondent/Carrier under Texas Labor Code Ann. §409.0091(s).

Petitioner did not provide documentation to support its request for reimbursement was filed before March 1, 2008. Texas Labor Code Ann. §409.0091(s) states that if information was provided to a health care insurer before January 1, 2007, under Texas Labor Code Ann. §402.084(c-3), the health care insurer may file for reimbursement from the workers' compensation carrier not later than March 1, 2008, and may file a subclaim with the Division if the request for reimbursement has been presented and denied no later than March 1, 2008. Petitioner is not eligible to file for reimbursement from Respondent/Carrier because Petitioner did not provide documentation to support its request for reimbursement was filed before March 1, 2008.

Petitioner contended it was a subclaimant and met the requirements for medical fee dispute resolution under Texas Labor Code Ann. §409.009 and 28 Tex. Admin. Code §§140.6, 140.7, and 140.8, and complied with the requirements for reimbursement under 28 Tex. Admin. Code §133.307. Under 28 Tex. Admin. Code §§140.6(d), subclaimants, other than subclaimants under Texas Labor Code Ann. §409.0091, must participate in medical dispute resolution in the same manner as an injured employee or in the same manner as a health care provider, under 28 Tex. Admin. Code §133.307 and in particular 28 Tex. Admin. Code §133.307(c)(1)(A). Petitioner was required as a subclaimant to submit a reimbursement request in the form, format, and manner prescribed by the Division, and the reimbursement must contain all the elements listed on the form. 28 Tex. Admin. Code §133.307(c)(1)(A) requires filing within one-year after the date(s) of service in dispute on a form entitled a Medical Fee Dispute Resolution Request/Response (DWC-060) under 28 Tex. Admin. Code §133.307(c). The DWC-060 has a table that requires information, including dates of service, CPT Code(s), amount billed, medical fee guideline (maximum allowable reimbursement), total amount paid, amount in dispute, country where services were rendered, requestor's rationale for increased reimbursement or refund, and respondent's rationale for maintaining the reduction or denial. According to documentation submitted by Petitioner, the DWC-060 did not have the required information Petitioner was to provide and list on the table. In addition, Petitioner failed to attach and make part of the DWC-060 its position summary, explanation of benefits provided, medical bills, and medical documentation. Petitioner filed its request for dispute resolution more than one-year after the filing deadline and the documentation submitted by Petitioner did not comply with 28 Tex. Admin. Code §140.6(d), Tex. Lab. Code Ann. § 409.009, and 28 Tex. Admin. Code §133.307.

A health care insurer may proceed as a subclaimant under §409.009 or §409.0091 of the Act to seek reimbursement of the cost of health care for which it paid from a workers' compensation insurance carrier if the services provided are for a compensable injury. Section 409.009 of the Act provides:

**SUBCLAIMS:** 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.

The evidence presented failed to establish Petitioner was a health care insurer and the evidence failed to establish Petitioner provided any compensation to Claimant, either directly or indirectly. Petitioner does not meet the requirements under §409.009.

Based on the submitted evidence, the preponderance of the evidence is not contrary to the MFDRFD that Petitioner is not entitled to reimbursement of a total of \$1517.87 for the compensable injury of \_\_\_\_\_.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

### **FINDINGS OF FACT**

1. The parties stipulated to the following facts:
  - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - B. On \_\_\_\_\_, Claimant was the employee of (Employer).
  - C. On \_\_\_\_\_, Claimant sustained a compensable injury.
  - D. The Medical Fee Dispute Resolution determined Petitioner should not be reimbursed \$1517.87.
2. Carrier delivered to Petitioner a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Claimant did not appear at the medical contested case hearing on November 17, 2010, and her appearance was waived by the Petitioner and Respondent/Carrier.
4. On April 09, 2010, the Medical Fee Dispute Resolution Findings and Decision determined that (Sub-Claimant), Petitioner is not entitled to reimbursement of a total of \$1517.87 for the compensable injury of \_\_\_\_\_.

5. Petitioner did not file for dispute resolution in accordance with Tex. Lab. Code Ann. §§ 409.009, 409.0091, and 28 Tex. Admin. Code §§140.6, 140.7 and 140.8.
6. Petitioner's request is not eligible for medical fee dispute resolution under 28 Tex. Admin. Code §133.307.
7. Petitioner is not eligible to file for reimbursement from the Respondent/Carrier under Tex. Lab. Code Ann. §409.0091.
8. Petitioner did not file for reimbursement from Respondent/Carrier in a timely manner as defined by Tex. Lab. Code Ann. §409.0091(s).
9. Petitioner did not file for reimbursement from Respondent/Carrier in the form and manner prescribed by Tex. Lab. Code Ann. §409.0091(f).
10. The medical services performed before the Date of Injury and included in the dispute are not services eligible for payment under this compensable injury.
11. Petitioner is not eligible to file for reimbursement from the Respondent under Tex. Lab. Code Ann. §409.009.

#### **CONCLUSIONS OF LAW**

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the Medical Fee Dispute Resolution Findings and Decision that (Subclaimant), Petitioner, is not entitled to reimbursement of a total of \$1517.87 for the compensable injury of \_\_\_\_\_.

#### **DECISION**

Respondent is not liable to Petitioner for the additional reimbursement of \$1517.87 for the compensable injury of \_\_\_\_\_.

#### **ORDER**

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

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

**ROBIN M. MOUNTAIN  
225 EAST JOHN CARPENTER FREEWAY, SUITE 1300  
IRVING, TEXAS 75062-2281.**

Signed this 30<sup>th</sup> day of November, 2010.

KEN WROBEL  
Hearing Officer