

APPEAL NO. 002977-S

Following a contested case hearing held on August 31, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the appellant (employer) was not entitled to reimbursement of medical expenses from the respondent (carrier) under Section 408.003(e) of the 1989 Act. The hearing officer further determined that there is no authority under the 1989 Act or rules for reimbursement of the employer as a sub-claimant under Section 409.009 of the 1989 Act. The employer appealed both determinations. The carrier responded that the hearing officer's decision should be affirmed.

DECISION

Affirmed in part, reversed and rendered in part.

The claimant, employer's C.E.O., sustained a compensable injury on _____, when the small plane he was piloting on business crashed. On _____, the employer had actual notice of the injury, its severity, and the fact that it was sustained in the course and scope of employment. The employer immediately began providing the claimant with medical and transportation benefits, which, shortly thereafter, expanded into benefits for housing and day-to-day living expenses. The employer filed an Employer's First Report of Injury or Illness (TWCC-1) with the carrier on February 16, 1999. The employer requested reimbursement for benefits paid to and for the claimant from the carrier on March 19, 1999, by filing an Employer's Report for Reimbursement of Voluntary Payment (TWCC-2).

**ENTITLEMENT TO REIMBURSEMENT UNDER
SECTION 408.003**

The hearing officer's determination that the employer is not entitled to reimbursement from the carrier under Section 408.003 is affirmed.

The employer seeks reimbursement from the carrier under Section 408.003 of the 1989 Act. That section states in part that:

After an injury, an employer may:

- (1) initiate benefit payments, including medical benefits; or
 - (2) on the written request or agreement of the employee, supplement income benefits paid by the insurance carrier by an amount that does not exceed the amount computed by subtracting the amount of the income benefit payments from the employee's net preinjury wages.
- (b) If an injury is found to be compensable and an insurance carrier initiates compensation, the insurance carrier shall reimburse the

employer for the amount of benefits paid by the employer to which the employee was entitled under this subtitle. Payments that are not reimbursed or reimbursable under this section may be reimbursed under Section 408.127.

- (c) The employer shall notify the commission and the insurance carrier on forms prescribed by the commission of the initiation of and amount of payments made under this section.
- (d) Employer payments made under this section:
 - (1) may not be construed as an admission of compensability; and
 - (2) do not affect the payment of benefits from another source.
- (e) If an employer does not notify the insurance carrier of the injury in compliance with Section 409.005, the employer waives the right to reimbursement under this section

The employer did not give the carrier notice of the claimant's injury within eight days, as required by Section 409.005(b) of the 1989 Act, and waived its right to reimbursement under Section 408.003.

ENTITLEMENT TO FILE A CLAIM AS SUB-CLAIMANT UNDER SECTION 409.009

The hearing officer's determination that there is no authority under the 1989 Act or rules for reimbursement of the employer as a sub-claimant under Section 409.009 of the 1989 Act is reversed and rendered.

Section 408.003(b) states that payments which are not reimbursed or reimbursable under that section may be reimbursed under Section 408.127. In this case, the employer has waived its rights to reimbursement under Section 408.003 by failing to give the carrier proper notice. Therefore, the payments made by the employer to, and on behalf of, the claimant are not reimbursable under Section 408.003.

The employer may file for reimbursement with the carrier in accordance with Section 408.127. Under Section 409.009, a person may file a claim with the commission as a sub-claimant to recover reimbursement for compensation if the person has provided compensation directly to or for an employee and has sought and been refused reimbursement from the carrier, in this case under Section 408.003.

We affirm the hearing officer's decision that the employer is not entitled to reimbursement from the carrier under Section 408.003 and reverse the hearing officer's decision that there is no authority under the 1989 Act or rules for reimbursement as a sub-claimant under Section 409.009 of the 1989 Act and render a new decision that the employer has standing under Section 409.009 of the 1989 Act as a sub-claimant to seek reimbursement under Section 408.127.

Kenneth A. Huchton
Appeals Judge

Concur:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge