

APPEAL NO. 032973-s  
FILED DECEMBER 29, 2003

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 August 28, 2003. The hearing officer determined that respondent (carrier) is entitled to reimbursement from proceeds from claimant's uninsured/underinsured motorist (UM) coverage in accordance with Section 417.001. Appellant (claimant) appealed this determination. Carrier responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and render.

Claimant contends the hearing officer erred in determining that carrier is entitled to reimbursement from proceeds from claimant's UM coverage in accordance with Section 417.001. The hearing officer accurately summarized the facts of this case. Briefly, claimant was involved in a work-related motor vehicle accident. He received \$25,000 from his own insurance company pursuant to his UM coverage. Claimant paid the premiums for the UM coverage.

In the past, we have interpreted Sections 417.001 and 417.002 and determined that a carrier is entitled to subrogation even where the UM policy has been paid for by the injured worker. Since our decision in Texas Workers' Compensation Commission Appeal No. 001511, decided August 11, 2000, and Texas Workers' Compensation Commission Appeal No. 013070, decided February 4, 2002, the San Antonio court of appeals issued Liberty Mutual v. Kinser, 82 S.W.3d 71 (Tex. App.-San Antonio 2002, pet. withdrawn). In that case, the court held that the insurance carrier was not entitled to subrogation where the UM policy was paid for by the injured worker. The court said that the carrier was not entitled to subrogation because: (1) there were no amounts paid to the injured worker "by a third party"; (2) there are no "damages" involved because the term damages means those recovered from a third party who is liable to the injured worker because the third party breached a contract or committed a tortious act against the injured employee; and (3) neither law nor equity is satisfied where the public policy against double recoveries trumps the public policy favoring giving people what they paid for when they have been prudent and have paid out of their own pocket for an insurance policy to protect themselves. In his dissents in Appeal Nos. 001511 and 013070, Judge Gary Kilgore also discussed some of these issues. After considering the record, briefs, and additional discussion of the law in Kinser, we now determine that we must retreat from our holdings in Appeal Nos. 001511 and 013070. We conclude that carrier is not entitled to subrogation in this case.

We reverse the hearing officer's decision and order and render a decision that carrier is not entitled to reimbursement from proceeds from the claimant's UM coverage.

According to information provided by carrier, the true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Edward Vilano  
Appeals Judge