

**SOAH DOCKET NO. 454-13-1462.M4**  
**MDR NO. \_\_\_\_\_**

<b>VISTA MEDICALCENTER</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>HOSPITAL,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>COMMERCE &amp; INDUSTRY INC. CO.,</b>	§	
<b>Respondent</b>	§	
	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER ON SUMMARY DISPOSITION**

This case involves a fee dispute for services rendered by Vista Medical Center Hospital (Provider) to an injured worker (Claimant). Provider seeks additional reimbursement from Commerce & Industry Insurance Company (Carrier) for services rendered to Claimant. Carrier filed a motion for summary disposition in this case, arguing that Claimant was not entitled to benefits under the Texas workers' compensation system because he previously received benefits for his injuries under the Louisiana workers' compensation system. After considering the arguments and authorities presented by the parties, the Administrative Law Judge (ALJ) granted summary disposition to Carrier. This Decision and Order memorializes that ruling.

**I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY**

Except in regard to the substantive issue regarding Claimant's receipt of benefits under the Louisiana workers' compensation system, no party raised issues concerning notice or jurisdiction. The substantive disputed matter is addressed in the following sections, and all remaining notice and jurisdictional issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

On July 19, 2012, the Texas Department of Insurance, Division of Workers Compensation (Division) issued a Medical Fee Dispute Resolution Findings and Decision (MFDR Decision) finding that Carrier owed no additional reimbursement to Provider for the services rendered to Claimant. On August 14, 2012, Provider requested an administrative hearing at the State Office of Administrative Hearings (SOAH) to contest the MFDR Decision.

The matter was consolidated with a larger docket involving a large number of stop-loss cases with the same provider, but was severed out when Carrier filed a Motion for Summary

Disposition on February 3, 2015. In support of the motion, Carrier submitted evidence showing that Claimant had received benefits covering his injury under the Louisiana workers' compensation system. Provider filed a response to the motion. On April 2, 2015, the ALJ granted summary disposition to Carrier and required the filing of proposed Findings of Fact and Conclusions of Law. The record closed on April 24, 2015.

## II. SUMMARY DISPOSITION EVIDENCE

Carrier presented summary disposition evidence establishing the following relevant facts:

- Claimant's injury occurred in \_\_\_ on \_\_\_\_, and was reported to the Louisiana Office of Worker's Compensation.<sup>1</sup>
- The claim for medical services provided to Claimant was processed under Louisiana workers' compensation laws.<sup>2</sup>
- Indemnity payments were made to Claimant under Louisiana workers' compensation laws.<sup>3</sup>
- Claimant was advised by Carrier's adjuster that his claim could be handled under either Louisiana or Texas workers' compensation laws, and he elected to handle the claim under Louisiana's laws.<sup>4</sup>
- Claimant settled his claim for his injury under Louisiana laws and with the approval of the Louisiana Office of Worker's Compensation.<sup>5</sup>

## III. DISCUSSION

### A. Applicable Law

An ALJ may issue a decision and order on all or part of a contested case without an evidentiary hearing if the evidence shows there is no genuine issue as to any material fact and a party is entitled to a decision in its favor as a matter of law.<sup>6</sup>

Under certain conditions, an employer is subject to liability under the Texas Workers' Compensation Act (TWCA) even if a worker is injured outside of Texas.<sup>7</sup> However, Texas law

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<sup>1</sup> Ex. 1, pp. 1–2, to Carrier's Motion for Summary Disposition.

<sup>2</sup> Ex. 1, p. 3, to Carrier's Motion for Summary Disposition.

<sup>3</sup> Ex. 1, p. 4, to Carrier's Motion for Summary Disposition.

<sup>4</sup> Ex. 1, p. 5, to Carrier's Motion for Summary Disposition.

<sup>5</sup> Ex. 1, pp. 6–21, to Carrier's Motion for Summary Disposition.

<sup>6</sup> 1 Tex. Admin. Code § 155.505(a).

precludes an injured worker from recovering twice for the same injury under the workers' compensation laws of Texas and another state. Specifically, Texas Labor Code § 406.075(a) provides that "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 [TWCA]." The plain language of this statute bars recovery under TWCA by a worker who has elected to receive and actually received workers' compensation benefits in another jurisdiction.<sup>8</sup> Texas courts have further interpreted this statute to bar recovery under TWCA by a party whose claim derives from the worker's claim.<sup>9</sup> While TWCA provides for reimbursement to subclaimants,<sup>10</sup> such "reimbursement is derivative of the claimant's ability to recover benefits."<sup>11</sup> If a worker cannot claim benefits under TWCA, neither can a subclaimant.<sup>12</sup>

## **B. ALJ's Analysis**

In its motion, Carrier argues that, pursuant to Texas Labor Code § 406.075(a), the Division lacked jurisdiction to (1) conduct MDR and issue findings and decision in this matter, and (2) refer this matter to SOAH for a contested case hearing.<sup>13</sup> Provider disputes Carrier's interpretation of § 406.075(a), arguing the statute does not define the Division's jurisdiction but rather provides an affirmative defense.<sup>14</sup> According to Provider, Carrier waived any affirmative defenses when it failed to raise them at MDR, citing to the Division's rules requiring denial reasons to be provided by a Carrier before MDR is requested.<sup>15</sup>

The ALJ disagrees with Provider's argument that the Division's rules (limiting presentation of MDR denial reasons and defenses to the time before MDR is requested) preclude summary disposition in this case. The Division's rules governing MDR do not apply in a blanket manner to contested case hearings at SOAH, which are conducted in accordance with SOAH's own rules of procedure pursuant to Texas Government Code § 2003.050(b). Carrier's failure to raise the issue of Claimant's recovery under Louisiana law in its original explanation of benefits or before MDR does not bar it from raising this argument now. The ALJ concludes that the bar to recovery contained in Texas Labor Code § 406.075 is not waived when it is not raised prior to

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<sup>7</sup> Tex. Lab. Code § 406.071.

<sup>8</sup> *Texas Mut. Ins. Co. v. Sonic Sys. Intern., Inc.*, 214 S.W.3d 469, 471 (Tex. App.—Houston [14th Dist.] 2006, pet. denied).

<sup>9</sup> *Id.* at 477.

<sup>10</sup> Tex. Lab. Code § 409.009.

<sup>11</sup> *Texas Mut.*, 214 S.W.3d at 477 (internal citation omitted).

<sup>12</sup> *Id.* at 477.

<sup>13</sup> Carrier's Motion for Summary Disposition at 2–3.

<sup>14</sup> Provider's Response to Motion for Summary Disposition at 1–2.

<sup>15</sup> Provider's Response to Motion for Summary Disposition at 2.

a SOAH hearing. The statute provides an absolute bar to recovery and, in this sense, can technically be applied to any step in the process that arises under the TWCA. Thus, Carrier could raise it for the first time as a bar to a SOAH hearing, which arises under the TWCA, even if it was not raised or presented as a bar to the MDR proceeding.

However, the ALJ does not decide whether the bar is jurisdictional in nature. Regardless of whether Texas Labor Code § 406.075(a) somehow limits the jurisdiction of either SOAH or the Division, it certainly does bar recovery by Claimant, who received workers' compensation payments and settled the claim for his on-the-job injury under Louisiana's workers' compensation laws.<sup>16</sup> Under Texas law, that bar against recovery extends to Provider as Claimant's subclaimant.<sup>17</sup> Accordingly, as a matter of law, Provider has no right to recover any payments—let alone additional payments—from Carrier for Claimant's injury that was covered by Louisiana workers compensation benefits.

Moreover, to the extent Provider argues that the services it provided were somehow for a different covered injury to Claimant, this argument is not supported by the evidence. Provider's own claim for reimbursement lists the same date of injury (Date of Injury) as the injury covered by the Louisiana workers' compensation settlement, and the evidence offered on summary disposition establishes that there was only a single workers' compensation injury to Claimant. Thus, the injury for which Provider rendered services to Claimant was clearly the same injury for which Claimant received Louisiana workers' compensation benefits.

In conclusion, the ALJ finds that there are no disputed facts or legal issues in this case. The summary disposition evidence establishes that Carrier is entitled to judgment as a matter of law. For these reasons, Carrier's motion for summary disposition was granted and this Decision and Order finds that Provider has no entitlement to reimbursement for any of the services in issue in this case. In support of this determination, the ALJ makes the following Findings of Fact and Conclusions of Law.

#### **IV. FINDINGS OF FACT**

1. Vista Medical Center Hospital (Provider) seeks additional reimbursement from Commerce & Industry Insurance Company (Carrier) for inpatient hospital services it provided to a workers' compensation claimant (Claimant) from February 12, 2007, through February 16, 2007, for an injury suffered by Claimant on \_\_\_\_\_.
2. Claimant was injured while working on a job site in \_\_\_\_\_.

<sup>16</sup> *Texas Mut.*, 214 S.W.3d at 477.

<sup>17</sup> *Id.* at 744.

3. Claimant elected to pursue his claim under the Louisiana Workers' Compensation statute, and Carrier handled the claim under the Louisiana Workers' Compensation statute.
4. Claimant settled his Louisiana workers' compensation claim with Carrier and the settlement was approved by a judge at the Louisiana Office of Workers' Compensation on June 1, 2012.
5. Carrier reimbursed Provider \$24,414.45 for dates of service February 12, 2007, through February 16, 2007.
6. Provider requested Medical Fee Dispute Resolution with the Texas Department of Insurance, Division of Workers Compensation (Division).
7. On July 19, 2012, the Division issued its Medical Fee Dispute Resolution Findings and Decision, which found that Carrier owed no additional reimbursement to Provider.
8. Provider requested a hearing before the State Office of Administrative Hearings (SOAH).
9. On February 3, 2015, Carrier filed a Motion for Summary Disposition with SOAH.
10. On April 2, 2015, Administrative Law Judge Craig R. Bennett granted the Motion for Summary Disposition.
11. The record closed on April 24, 2015, after proposed findings of fact and conclusions of law were filed.

## **V. CONCLUSIONS OF LAW**

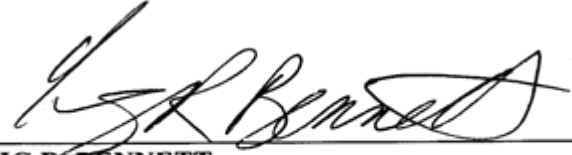
1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to Texas Labor Code § 413.031 and Texas Government Code chapter 2003.
2. Provider received timely and adequate notice of the motion for summary disposition. 1 Tex. Admin. Code §§ 155.013, 155.505.
3. A contested case hearing may be disposed of by summary disposition without an evidentiary hearing if the pleadings, affidavits, materials obtained by discovery, admissions, matters officially noted, stipulations, or evidence of record show there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 Tex. Admin. Code § 155.505(a).
4. As the party seeking affirmative relief through summary disposition, Carrier bore the burden of proof. 1 Tex. Admin. Code § 155.427, 155.505.

5. An injured employee who elects to pursue a remedy under the workers' compensation laws of another jurisdiction and who recovers benefits under those laws may not recover under the Texas Workers Compensation Act for the same injury. Texas Labor Code § 406.075(a).
6. Having elected to receive, and having actually received, workers' compensation benefits under the laws of another jurisdiction, Claimant is not entitled to receive workers' compensations benefits under the Texas Workers' Compensation Act. Tex. Lab. Code § 406.075(a); *Texas Mut. Ins. Co. v. Sonic Sys. Intern., Inc.*, 214 S.W.3d 469, 471 (Tex. App.—Houston [14th Dist.] 2006, pet. denied).
7. Provider's claim for reimbursement is derivative of and contingent upon Claimant's ability to receive benefits under the Texas Workers' Compensation Act. *Texas Mut. Ins. Co. v. Sonic Sys. Intern., Inc.*, 214 S.W.3d 469, 477 (Tex. App.—Houston [14th Dist.] 2006, pet. denied).
8. Once Claimant was barred from receiving benefits under the Texas Workers' Compensation Act, Provider was similarly barred. *Texas Mut. Ins. Co. v. Sonic Sys. Intern., Inc.*, 214 S.W.3d 469, 478 (Tex. App.—Houston [14th Dist.] 2006, pet. denied).
9. The pleadings and summary disposition evidence provided with Carrier's Motion for Summary Disposition show there is no genuine issue as to any material fact and that Carrier is entitled to a decision in its favor as a matter of law. 1 Tex. Admin. Code § 155.505.
10. Provider is not due any reimbursement from Carrier under the Texas Workers' Compensation Act for services rendered to Claimant between February 12, 2007, and February 16, 2007, for his injury of (Date of Injury).

**ORDER**

**IT IS ORDERED** that Carrier is not required to reimburse Provider any additional amount for the services in issue in this case.

**SIGNED May 12, 2015.**

A handwritten signature in black ink, appearing to read "CRAIG R. BENNETT", written over a horizontal line.

**CRAIG R. BENNETT  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**