

**SOAH DOCKET NOS. 454-13-2460.M4 and 454-13-0270.M4**  
**MDR NO. \_\_\_\_\_**

<b>VISTA MEDICAL CENTER</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>HOSPITAL,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>INSURANCE COMPANY OF THE</b>	§	
<b>STATE OF PENNSYLVANIA,</b>	§	
<b>Respondent<sup>1</sup></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 the Insurance Company of the State of Pennsylvania (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 federal Longshore and Harbor Workers' Compensation Act (LHWCA). 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 for the substantive issue regarding Claimant's receipt of benefits under the LHWCA, 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 August 23, 2012, the Texas Department of Insurance, Division of Workers Compensation (Division), issued a Medical Fee Dispute Resolution Findings and Decision (MFDR Decision), ordering Carrier to pay additional reimbursement of \$1,940.75 plus interest to

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<sup>1</sup> This Decision and Order addresses two dockets that are related and involve the same claimant and parties. However, the parties' roles as petitioner and respondent are switched in the two dockets. For ease of reference only, the caption in this order identifies Vista Medical Center Hospital as the petitioner.

Provider. On September 11, 2012, Carrier filed its request for an administrative hearing at the State Office of Administrative Hearings (SOAH) to contest the MFDR Decision. On September 20, 2012, Provider filed its own request for a hearing to contest the MFDR Decision, seeking additional payment beyond that ordered in the MFDR Decision. The two requests for hearing were assigned separate docket numbers, even though they relate to the same MFDR Decision.

The two cases were consolidated with a larger docket involving a large number of stop-loss cases with the same provider, but were severed out when Carrier filed a Motion for Summary Disposition on December 22, 2014. In support of the motion, Carrier submitted evidence showing that Claimant had received benefits covering his injury under the LHWCA. Accordingly, Carrier argued Claimant was not entitled to any additional benefits under the Texas 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 on \_\_\_\_\_, while he was working on a dock transferring liquid product between railcars and marine vessels, thus causing Claimant to be engaged in maritime employment at the moment of his injury.
- Claimant made a claim under the LHWCA for his injury of \_\_\_\_\_.
- The LHWCA is a federal compensation system administered by the U.S. Department of Labor.
- An ALJ with the U.S. Department of Labor issued a decision finding that Claimant was covered under the LHWCA for his injury of \_\_\_\_\_.
- Claimant settled his LHWCA claim with Carrier and the settlement was approved by an ALJ at the U. S. Department of Labor on April 19, 2002.
- Provider rendered services to Claimant between June 6, 2006, and June 13, 2006, for treatment related to his injury of \_\_\_\_\_.
- Carrier reimbursed Provider the sum of \$23,047.05 under the LHWCA for the services rendered between June 6, 2006, and June 13, 2006.

### 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>2</sup>

Under Texas law, a person “covered by a method of compensation established under federal law is not subject to” the Texas Workers’ Compensation Act (TWCA).<sup>3</sup> The LHWCA provides “a method of compensation established under federal law,” so a person covered by it is not covered by, and has no remedies under, the TWCA. As one Texas appellate court has noted:

[T]he LHWCA preempts all negligence claims asserted under state wrongful-death statutes against the workers’ employer and provides the exclusive remedy for such claims to the workers’ estate and heirs, except for claims compensable under the state worker’s compensation act. **In Texas, the claimant’s choice of remedies is made simpler still, because “a person covered by a method of compensation established under federal law” is not subject to the state Workers’ Compensation Act at all.**<sup>4</sup>

Therefore, a person covered by the federal LHWCA is not covered “at all” (as the court noted) under the TWCA. This provision of the Texas Labor Code exempting certain workers from coverage also acts as a bar to any party whose claims derive from the workers’ claims. While the TWCA provides for reimbursement to subclaimants,<sup>5</sup> such “reimbursement is derivative of the claimant’s ability to recover benefits.”<sup>6</sup> If a worker cannot claim benefits under TWCA, neither can a subclaimant.<sup>7</sup>

#### B. ALJ’s Analysis

In its motion, Carrier argues that, pursuant to Texas Labor Code § 406.091(a)(2), the Division lacked jurisdiction over the claim involved in this case. Provider argues that Carrier’s motion should be denied because (1) there is no evidence that Claimant’s injury for which he received services in 2006 from Provider was related to his covered injury under the LHWCA; (2)

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<sup>2</sup> 1 Tex. Admin. Code § 155.505(a).

<sup>3</sup> Tex. Lab. Code § 406.091(a)(2).

<sup>4</sup> *In re Shippers Stevedoring Co.*, 274 S.W.3d 840, 844 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2008, pet. den’d) (emphasis added).

<sup>5</sup> Tex. Lab. Code § 409.009.

<sup>6</sup> *Texas Mut. Ins. Co. v. Sonic Sys. Intern., Inc.*, 214 S.W.3d 469, 477 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2006, pet. denied)

<sup>7</sup> *Id.* at 477.

even if it was the same injury, Texas Labor Code § 406.091 does not define the Division's jurisdiction but rather provides an affirmative defense; and (3) Carrier waived any affirmative defenses when it failed to raise them at the Division.

The ALJ disagrees with Provider's argument that the services it provided might somehow be for a different covered injury to Claimant. Provider's own claim for reimbursement lists the same date of injury (Date of Injury) as the injury covered by the LHWCA and also references the LHWCA claim number. Further, 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 benefits under the LHWCA.

The ALJ also disagrees with Provider's argument that the Division's rules (limiting presentation of MFDR denial reasons and defenses to the time before MFDR is requested) preclude summary disposition in this case. The Division's rules governing MFDR 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 coverage and recovery under the LHWCA in its original explanation of benefits or before the Division does not bar it from raising this argument now. The ALJ concludes that the bar to recovery contained in Texas Labor Code § 406.091 is not waived when it is not raised prior to a SOAH hearing. The statute provides an absolute exclusion of a person from the TWCA 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 MFDR proceeding.

In fact, by exempting coverage for workers covered under federal compensation systems, Texas Labor Code § 406.091(a)(2) does appear to be jurisdictional in nature, precluding any coverage at all for a Claimant covered by such federal compensation systems. Absent coverage under the TWCA, neither the Division nor SOAH would appear to have jurisdiction over the Provider's request for compensation. However, regardless of whether Texas Labor Code § 406.091(a)(2) limits the jurisdiction of either SOAH or the Division, it certainly does preclude recovery by Claimant, who received workers' compensation payments and settled the claim for his on-the-job injury under the federal LHWCA. Under Texas law, this preclusion against recovery extends to Provider as Claimant's subclaimant.<sup>8</sup> Accordingly, as a matter of law,

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<sup>8</sup> *Id.* at 477.

Provider has no right to recover any payments—let alone additional payments—from Carrier for Claimant’s injury that was covered by the federal LHWCA.

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 is not entitled 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 the Insurance Company of the State of Pennsylvania (Carrier) for inpatient hospital services it provided to a workers’ compensation claimant (Claimant) from June 6, 2006, through June 13, 2006, for an injury suffered by Claimant on \_\_\_\_\_.
2. Claimant was injured while he was working on a dock transferring liquid product between railcars and marine vessels, thus causing Claimant to be engaged in maritime employment at the moment of his injury.
3. Claimant made a claim under the federal Longshore and Harbor Workers’ Compensation Act (LHWCA) for his injury of \_\_\_\_\_.
4. An Administrative Law Judge (ALJ) with the U.S. Department of Labor issued a decision finding that Claimant was covered under the LHWCA for his injury of \_\_\_\_\_.
5. Claimant settled his LHWCA claim with Carrier and the settlement was approved by an ALJ at the U. S. Department of Labor on April 19, 2002.
6. Carrier reimbursed Provider the sum of \$23,047.05 under the LHWCA for the services rendered between June 6, 2006, and June 13, 2006.
7. Provider requested Medical Fee Dispute Resolution with the Texas Department of Insurance, Division of Workers Compensation (Division).
8. On August 23, 2012, the Division issued a Medical Fee Dispute Resolution Findings and Decision (MFDR Decision), ordering Carrier to pay additional reimbursement of \$1,940.75 plus interest to Provider.
9. On September 11, 2012, Carrier filed its request for an administrative hearing at the State Office of Administrative Hearings (SOAH) to contest the MFDR Decision.

10. On September 20, 2012, Provider filed its own request for a hearing to contest the MFDR Decision, seeking additional reimbursement beyond that ordered in the MFDR Decision.
11. The two requests for hearing were assigned separate docket numbers, even though they relate to the same MFDR Decision.
12. On December 22, 2014, Carrier filed a Motion for Summary Disposition with SOAH.
13. On April 2, 2015, Administrative Law Judge Craig R. Bennett granted the Motion for Summary Disposition.
14. 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 § 155.505.
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 is covered by a method of compensation established under federal law is not subject to the Texas Workers' Compensation Act (TWCA). Texas Labor Code § 406.075(a).
6. The LHWCA provides a method of compensation established under federal law for injured workers engaged in the duties of harbor workers and longshoremen, so a person covered by the LHWCA is not covered by, and has no remedies under, the TWCA.
7. Having elected to receive, and having actually received, workers' compensation benefits under the LHWCA, Claimant is not entitled to receive workers' compensations benefits under the TWCA. Tex. Lab. Code § 406.091; *In re Shippers Stevedoring Co.*, 274 S.W.3d 840, 844 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2008, pet. den'd); *Texas Mut. Ins. Co.*

*v. Sonic Sys. Intern., Inc.*, 214 S.W.3d 469, 471 (Tex. App.—Houston [14th Dist.] 2006, pet. denied).

8. Provider's claim for reimbursement is derivative of and contingent upon Claimant's ability to receive benefits under the TWCA. *Texas Mut. Ins. Co.*, 214 S.W.3d at 477.
9. Once Claimant was ineligible to receive benefits under the TWCA, Provider was similarly ineligible. *Texas Mut. Ins. Co.*, at 478.
10. 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.
11. Provider is not due any additional reimbursement from Carrier under the TWCA for services rendered to Claimant between June 6, 2006, and June 13, 2006, 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.

**ISSUED May 21, 2015.**



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