IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Travelers Insurance Company, Petitioner	:	
v.	:	No. 808 C.D. 2013
	:	Submitted: October 18, 2013
Workers' Compensation Appeal Board (State Workers' Insurance Fund), Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON **FILED: December 16, 2013**

In this appeal based on numerous (and sometimes contradictory) facts, Travelers Insurance Company (Travelers) asks whether the Workers' Compensation Appeal Board (Board) erred in determining it was estopped from denying coverage for medical benefits related to a work injury suffered by Azza Shalaby (Claimant). After review, we affirm.

Claimant works for Al-Aqsa Islamic Academy (Employer) as a teacher. In November 2007, Claimant suffered a work injury while working for Employer.

About three weeks later, First Nonprofit Mutual Insurance Company (First Nonprofit)/Travelers[1] issued a medical only notice of compensation payable (NCP) accepting liability for medical benefits related to a fracture of the left arm (Medical Only NCP) suffered by Claimant. Thereafter, in February 2008, Travelers issued a second NCP accepting liability for indemnity benefits for Claimant (Indemnity NCP).

In June 2008, a different insurance carrier, the State Workers' Insurance Fund (SWIF) issued a notice of workers' compensation denial (NCD) relating to Claimant's November 2007 work injury. On the NCD, SWIF checked box 4 indicating, "[a]lthough an injury took place, the employee is not disabled as a result of this injury within the meaning of the Workers' Compensation Act [(Act)].[2]" WCJ Op., 11/18/10, Finding of Fact (F.F.) No. 4; Reproduced Record (R.R.) at 54a.

About a month later, in response to a May 2008 utilization review (UR) request filed by Travelers, a UR determination was rendered, concluding certain treatment Claimant received was reasonable up until August 31, 2008 and unreasonable after that date. Claimant filed a petition for review of the UR determination (UR Petition).

[1] The record reveals Travelers insured an entity known as First Nonprofit Mutual Insurance Company, which is apparently an affiliate of Travelers. Travelers' witnesses agreed that First Nonprofit and Travelers could be viewed as the same entity for purposes of the claim at issue here.

[2] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§1-1041.4, 2501-2708.

In August 2008, a Workers' Compensation Judge (WCJ) held a hearing on Claimant's UR petition. At the hearing, which was not stenographically recorded, counsel for Travelers indicated that his client filed the underlying UR request, and SWIF was not a proper party to the litigation. F.F. No. 6. As a result, the WCJ issued an interlocutory order dismissing SWIF as a party to the pending litigation "by agreement of the parties." Id.

Thereafter, in December 2008, Travelers filed a petition to review Claimant's compensation benefits, alleging it was not Employer's workers' compensation insurance carrier either at present or as of the date of Claimant's November 2007 injury. Rather, Travelers alleged, SWIF was Employer's carrier. Through its review petition, Travelers sought to correct this error and to recover the compensation benefits it paid to Claimant as a result of its error. Three weeks later, Travelers filed a second review petition alleging it issued the Indemnity NCP in error, and it sought to correct that error. Shortly thereafter, Travelers filed a joinder petition in which it sought to join SWIF as an additional defendant. Hearings on Travelers' petitions ensued before a WCJ.

In support of its review petitions, Travelers presented the affidavit of Tina Kleinsmith (Kleinsmith), a claims case manager for Travelers, who assumed responsibility for Claimant's file in December 2008. According to Kleinsmith's affidavit, Travelers mistakenly issued the Indemnity NCP in February 2008 based on an administrative error, and that NCP should be set aside because it acknowledged a payment obligation where none existed. Kleinsmith identified $9,191.05 in medical benefits and $5,174.72 in expenses paid by Travelers for this

claim. Copies of the two NCPs issued by Travelers and the NCD issued by SWIF, acknowledging a work injury, but disputing disability, were appended to Kleinsmith's affidavit.

Travelers also submitted an affidavit from Dianne Murphy (Murphy), a unit manager for Travelers, who is responsible for supervising claims representatives in their handling of workers' compensation claims in litigation. Murphy served as the supervisor for the claim at issue here since the claim was transferred to a claims representative under Murphy's supervision in May 2008. Murphy contacted the Pennsylvania Compensation Rating Bureau (Rating Bureau) in October 2008, and she learned that SWIF was the appropriate carrier for this claim. Murphy contacted an attorney for Travelers in December 2008 to advise him of her discovery. Attached to Murphy's affidavit is a copy of a Bureau of Workers' Compensation printout, which shows that SWIF was Employer's carrier from 1994 to 2009. Also attached to Murphy's affidavit are printouts documenting the payments Travelers made in connection with Claimant's injury, as well as a letter from the Bureau of Workers' Compensation advising that SWIF provided workers' compensation insurance coverage for Employer as of the date of Claimant's injury.

In response, SWIF presented depositions of Travelers' employees regarding the handling and processing of Claimant's claim. Linda Koenig (Koenig), a claims case manager, testified she was assigned Claimant's file in November 2007, and she made a determination that this was a compensable claim. Before determining there was coverage, she personally reviewed the insurance

policy and other coverage information, and found the policy was in Travelers' system. Koenig issued the Medical Only NCP after performing her usual and customary review of the file. In February 2008, Travelers issued the Indemnity NCP based on a clerical error, and the wage calculations for that NCP pertained to a different file. Koenig paid all of the medical bills she received in connection with this claim. She also issued Bureau of Workers' Compensation documents to Claimant throughout the duration of her handling of this claim. Travelers did not pay indemnity benefits for this claim. Koenig first learned that Travelers did not have coverage for this claim when the Bureau of Workers' Compensation notified her, but she could not recall the date on which that occurred. Koenig then attempted to contact SWIF numerous times.

SWIF also presented the testimony of Kleinsmith, the claims representative who assumed responsibility for Claimant's file from Koenig in December 2008. By the time she assumed responsibility, both NCPs were issued and a determination was already made that Travelers was not the correct carrier. Travelers determined it was not the correct carrier in October 2008. During the period in which she was responsible for the claim, Kleinsmith made payment of ongoing medical benefits to various providers. The Medical Only NCP was issued in December 2007 after a determination was made that Travelers provided coverage for the claim. The Indemnity NCP was issued in February 2008 after it was again determined there was coverage. Pursuant to company procedure, the insurance policy is consulted when determining whether there is coverage. To Kleinsmith's knowledge, that procedure was followed here. Kleinsmith did not assert Travelers issued the Medical Only NCP in error. According to Kleinsmith,

the only NCP at issue was the Indemnity NCP. Travelers' clerical staff issued the Indemnity NCP to the wrong file. The error was detected when someone called Travelers, and Travelers subsequently followed up with the Rating Bureau regarding coverage.

SWIF also presented the testimony of Murphy, who agreed that Travelers took issue with the Indemnity NCP, and was not challenging the Medical Only NCP. Travelers continues to pay medical benefits pursuant to the Medical Only NCP. However, Travelers is contending it is not the carrier of record for this November 2007 date of injury; rather, SWIF is the carrier. Murphy was consulted about this claim around October 2008, when a claims account executive informed her that First Nonprofit realized the claim was on its rolls, but Employer was not one of its covered entities. Murphy then contacted the Rating Bureau, and she learned that SWIF carried coverage for the injury date. Murphy consulted counsel regarding the fact that Travelers did not have coverage for this claim. Murphy testified Travelers only paid medical benefits in connection with this claim; no wage loss benefits were paid.

SWIF also presented documentary evidence in the form of a computer printout of Travelers' claim notes. According to these notes, Koenig confirmed coverage for a policy that became effective in January 2007 and expired in January 2008. Coverage was reaffirmed in an entry in December 2007. In February 2008, Travelers sent Claimant an NCP and a statement of wages. Travelers scheduled an independent medical examination (IME) for Claimant in April 2008. As a result of

the IME, Travelers sent Claimant a notice of ability to return to work. Travelers then filed its UR request.

In late-May 2008, Koenig entered a note into the system regarding the results of an "ISO Claim Search." F.F. No. 14(b). The note revealed SWIF was the insurer of record for a "COMP" claim relative to an upper arm injury that occurred on November 20, 2007. Id. The note also indicated "Al Aqsa Islamic Society"[3] was the insured and Azza Shalaby was the claimant. R.R. at 96a (emphasis added).

In July 2008, Travelers retained counsel and, about a month later, Koenig noted that counsel would file a review petition to "correct the error on the NCP, [Medical Only] NCP should have been issued ...." F.F. No. 14(c). In August 2008, Koenig acknowledged receipt of an order dismissing SWIF as a party to the pending litigation.

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[3] In its opinion, the Board observed:

> Travelers' records list the name of the employer as Al Aqsa Islamic **Academy**, while the entry for SWIF shows the name of the employer as Al Aqsa Islamic **Society**. This difference in the names also appears in the … NCPs [and the NCD] issued by the two carriers (Ex. DS-1), while the printout from the Bureau appended to Ms. Murphy's Affidavit lists SWIF as the carrier dating back to 1994 for Al Aqsa Islamic **Society**. (Ex. D-2B) Neither the parties nor the WCJ appear to have explored the differences in the employer's name between Travelers and SWIF's records, and whether there were actually two entities separately insured for workers' compensation purposes.

Bd. Op., 4/16/13, at 10 n.7 (emphasis in original). In its brief to this Court, Travelers refers to Employer here as "Al-Aqsa Islamic Society/Academy." Pet'r's Br. at 5 (emphasis added).

In October 2008, Koenig entered a note into Travelers' system indicating the date of injury did not fall within the policy period and the policy "does not afford PA benefits ...." F.F. No. 14(d). Shortly thereafter, Murphy noted she contacted the Rating Bureau and confirmed SWIF was the appropriate carrier.

Based on his review of this evidence, the WCJ ultimately stated:

> I have carefully reviewed the evidence presented and find the majority of the evidence to be consistent and undisputed. Based upon the evidence above I find that SWIF was the carrier at risk for Claimant's November 20, 2007 work injury. I further find, however, that Travelers accepted liability for the November 20, 2007 work injury after investigating the claim and that it confirmed its acceptance by filing [NCPs] on December 10, 2007 and February 20, 2008. I further find that Travelers paid medical and wage loss benefits to Claimant, and that it requested an IME and [UR] regarding Claimant's treatment. I find that Travelers was aware of SWIF's possible liability for the work injury as of May, 2008, that it agreed to dismiss SWIF from the prior UR Petition on August 22, 2008, and that filed its present [p]etitions on December 23, 2008 and January 13, 2009. …

F.F. No. 15.

The WCJ determined that Travelers met its burden of proving the Medical Only and Indemnity NCPs were materially incorrect because SWIF was Employer's carrier at the time of Claimant's November 2007 work injury. However, the WCJ determined, Travelers was estopped from requesting relief under Section 413(a) of the Act, 77 P.S. §771, to correct this error because it held itself out as the proper workers' compensation carrier for a period of a year before filing its review petitions, during which time it filed two NCPs, paid benefits, and requested an IME and a UR determination. Further, by accepting liability,

Travelers compromised SWIF's statutory right to contest liability pursuant to its NCD. Thus, citing Overhead Door Company of Lewistown, Inc. v. Workers' Compensation Appeal Board (Gill), 819 A.2d 635 (Pa. Cmwlth. 2003), the WCJ denied Travelers' review and joinder petitions. Travelers appealed to the Board.

In a thoughtful opinion, the Board affirmed in part and reversed in part. Specifically, the Board affirmed the WCJ's denial of Travelers' review and joinder petitions with regard to the Medical Only NCP on the ground that Travelers was estopped from denying coverage for medical benefits based on this Court's decision in Overhead Door. However, the Board reversed the denial of Travelers' review petition as to the Indemnity NCP. The Board based its reversal of the award of indemnity benefits on the fact that no party objected to a denial of indemnity benefits. Travelers now appeals to this Court.

On appeal,[4] Travelers argues this matter involves a contest between two carriers as to which of them should be liable for the medical expenses related to an undisputed work injury Claimant suffered in November 2007. Travelers contends it is undisputed that SWIF provided the coverage for workers' compensation benefits to Employer at that time. Also, it is undisputed that Travelers did not provide such coverage nor did its affiliate, First Nonprofit. Further, it is undisputed that both carriers here issued compensation documents admitting an injury and denying any disability arising therefrom. Travelers did so

[4] Our review is limited to determining whether the WCJ's findings of fact were supported by substantial evidence, whether an error of law was committed or whether constitutional rights were violated. Dep't of Transp. v. Workers' Comp. Appeal Bd. (Clippinger), 38 A.3d 1037 (Pa. Cmwlth. 2011).

with the Medical Only NCP. SWIF did so by issuing its "Box 4 Denial" in June 2008. Pet'r's Br. at 8. These documents place the two carriers, admittedly at different times, on essentially the same legal standing with regard to admissions of liability for the November 2007 work injury. See Forbes Road CTC v. Workers' Comp. Appeal Bd. (Consla), 999 A.2d 627 (Pa. Cmwlth. 2010).

Travelers maintains these documentary admissions by the respective carriers occurred prior to any supposed admission by Travelers' counsel at the August 2008 hearing, after which the WCJ dismissed SWIF as a party. Further, it is not at all clear that SWIF's documentary admission was ever disclosed to opposing counsel or to the WCJ at the time of that hearing. Inasmuch, however, as admissions were already made regarding the work injury by both carriers prior to the date of that hearing, a further admission by Travelers' counsel at that hearing is essentially irrelevant.

Travelers argues the WCJ and the Board erred in relying on Overhead Door because the facts of this matter are distinguishable from those in Overhead Door. Overhead Door turned on the fact that substitution of the carrier, at the time it was sought, would have resulted in serious prejudice to the claimant. Here, Travelers asserts, no prejudice can be established. SWIF had an opportunity to participate in the underlying litigation. Further, by the time of the WCJ's decision as to which carrier was liable, the UR litigation was long final. Thus, Travelers contends, no prejudice to either SWIF or Claimant would result from the substitution of carriers.

Instead, Travelers argues the WCJ and the Board should have relied on the line of cases that liberally allows substitution of carriers pursuant to Section 413(a) of the Act. See PMA Grp. v. Workers' Comp. Appeal Bd. (George Nickles, Keystone Contractors, Inc.), 768 A.2d 917 (Pa. Cmwlth. 2001); Birmingham Fire Ins. Co. v. Workmen's Comp. Appeal Bd. (Kennedy), 657 A.2d 96 (Pa. Cmwlth. 1995); Sunset Golf Course v. Workmen's Comp. Appeal Bd. (Dep't of Pub. Welfare), 595 A.2d 213 (Pa. Cmwlth. 1991); Swartz v. Workmen's Comp. Appeal Bd. (Dutch Pantry Rest.), 543 A.2d 201 (Pa. Cmwlth. 1988). Pursuant to Section 413(a), review of a compensation document for material mistake at the time of issuance is allowed at any time. Thus, neither the delays nor the conduct of Travelers here are relevant.

SWIF responds that the Board correctly affirmed the WCJ's decision finding Travelers liable by estoppel and thus denying a substitution of carriers. Based on Travelers' actions from its acceptance of the claim until its filing of the joinder petition, SWIF argues, the WCJ properly concluded Travelers was estopped from requesting relief under Section 413(a) of the Act and denied Travelers' petitions. SWIF contends the facts presented here are nearly identical to those presented in Overhead Door; therefore, this Court should affirm.

Upon review, we agree with the workers' compensation authorities that Overhead Door controls here. There, the claimant filed a claim petition in which he named CNA Insurance Company (CNA) as his employer's insurance carrier. Shortly thereafter, CNA filed a joinder petition seeking to join SWIF. At a WCJ hearing, counsel for SWIF represented that SWIF insured the employer

during the period in which the claimant sought disability benefits. As a result, the WCJ granted CNA's request to be dismissed from the case. SWIF then continued to fully litigate its defense to the claim petition. At a subsequent hearing, it was revealed that an error was made regarding the identity of the company that employed the claimant, and the claimant's employer was actually insured by AIG Insurance Company (AIG) rather than SWIF during the relevant period. It was explained that, although the claimant sued his proper employer, SWIF was not the employer's carrier. The claimant then filed a joinder petition seeking to join AIG as a party. Thereafter, the WCJ dismissed SWIF as a party. AIG then filed a petition to join SWIF, alleging SWIF should be estopped from denying coverage. The WCJ subsequently reversed his prior decision and brought SWIF back into the case as a party.

Ultimately, the WCJ dismissed the claimant's joinder petition against AIG, and granted the petition to join SWIF. The WCJ determined SWIF was the responsible carrier. To that end, the WCJ found SWIF was estopped from denying coverage based on its actions in the case over an extended period and the prejudice the claimant would suffer if forced to relitigate. Thus, the WCJ ordered SWIF to pay the claimant's indemnity benefits. The Board affirmed.

In upholding the determinations of the compensation authorities, this Court explained (with emphasis added):

> SWIF cites to numerous cases in its brief in an attempt to claim that the WCJ did not have the power to hold it liable. However, none of the cases cited involve the factual situation as found by the WCJ in this case.

> The record shows that SWIF entered this case contesting an injury, not responsibility for the claim. At hearing, its attorney stated his belief that SWIF was the responsible insurer. SWIF then sent [the] [c]laimant for an IME, conducted depositions and appeared at several hearings. It presented its own medical witness and cross-examined [the] [c]laimant and his witnesses. SWIF continued to litigate this case for eighteen months, all the while holding itself out as the responsible insurer, before finding that a mistake was made and presenting evidence that it was not [the] [c]laimant's insurer.
>
> In the cases of Tri-Union Express [v. Workers' Compensation Appeal Board (Hickle), 703 A.2d 558 (Pa. Cmwlth. 1997)] and American Insurance Company (Fireman's Fund Insurance Co.) v. Workmen's Compensation Appeal Board (Barnhart), 606 A.2d 655 (Pa. Cmwlth. 1992), we affirmed the decisions of the Board that the employers were estopped from denying an employer/employee relationship due to admissions by their agents that the claimants would be covered by workers' compensation insurance. These are the cases most factually similar to the instant case. Here, SWIF's attorney represented that SWIF was the responsible insurer and for eighteen months continued to represent SWIF as the responsible insurer. As such, we do not believe that the WCJ was without the power to hold SWIF liable based on its actions in this case.

Overhead Door, 819 A.2d at 639. Thus, we upheld the decisions of the compensation authorities that SWIF was estopped from denying coverage.[5]

[5] In Hanes v. Medical Care Availability and Reduction of Error Fund (Pa. Cmwlth., No. 414 M.D. 2010, filed March 16, 2011), 2011 WL 10843449 (unreported), we relied, in part, on Overhead Door Company of Lewistown, Inc. v. Workers' Compensation Appeal Board (Gill), 819 A.2d 635 (Pa. Cmwlth. 2003), in holding the Medical Care Availability and Reduction of Error (MCARE) Fund was estopped from denying coverage to a health care provider in a malpractice suit where the MCARE Fund defended the suit on the provider's behalf over a lengthy period. Further, in a footnote, this Court, speaking through Judge Cohn-Jubelirer stated:

> Numerous other courts have also invoked the doctrine of estoppel where a carrier has undertaken the defense of a case, *see, e.g., Braun v. Annesley*, 936 F.2d 1105, 1110 (10th Cir. 1991) (an insurer who undertakes the

(Footnote continued on next page…)

Here, as in Overhead Door, Travelers did not enter this case contesting responsibility for the claim. Rather, after investigating the claim, Travelers accepted liability for the work injury by filing two NCPs, first the Medical Only NCP, and later the Indemnity NCP. Further, Travelers paid Claimant's medical bills related to the work injury,[6] requested an IME, issued Claimant a notice of ability to return to work, and filed a UR request regarding the reasonableness and necessity of Claimant's medical treatment. Additionally, at an August 2008 hearing, Travelers agreed to dismiss SWIF as a party,[7] and it did not seek to rejoin SWIF until five months later in January 2009. As the Board

(continued…)

> defense of a matter cannot at a later date deny coverage because permitting such a denial grants the insurer the unfettered right to induce an individual to relinquish control of his or her defense); *Florida Physicians Insurance Co. v. Stern*, 563 So.2d 156 (Fla. App. 1990) (insurer that had defended doctor in medical malpractice case for fourteen months with actual or constructive knowledge of a coverage defense was estopped from denying coverage); *Hartford Insurance Group v. Mello*, 81 A.D.2d 577, 437 N.Y.S.2d 433 [(N.Y. App. Div. 1981)] (where the insurer had defended the insured for two years, the insurer was estopped from denying coverage for an incident that occurred prior to commencement of the policy); *Cigarette Racing Team, Inc. v. Parliament Insurance Co.*, 395 So.2d 1238 (Fla. 4th DCA 1981) (when an insurance company assumes the defense of an action, with knowledge, actual or presumed, of facts which would have permitted it to deny coverage, it may be estopped from subsequently raising the defense of non-coverage).

Hanes, Slip Op. at 13-14, 2011 WL 10843449 at *6 n.10.

[6] It appears that SWIF issued payment for one of Claimant's numerous medical bills. See Reproduced Record (R.R.) at 103a.

[7] Despite the fact that the hearing at which the WCJ found Travelers agreed to SWIF's dismissal was not stenographically recorded, as the Board explained, Travelers does not seriously dispute that it agreed to SWIF's dismissal from the case at that time.

explained, during this five-month period, the WCJ held two hearings,[8] and a deposition was taken of the UR reviewer. Thus, during this period, Travelers continued to litigate the case, holding itself out as the responsible insurer before realizing a mistake was made and attempting to join SWIF. Moreover, as the Board recognized, "the five-month timeline does not take into account any possible disadvantage to SWIF caused by its lack of participation in the earlier [UR] request that precipitated Claimant's filing of a UR [p]etition." Bd. Op., 4/16/13, at 11.

Further, and of particular import here, the WCJ found that Travelers was aware of SWIF's possible liability for the work injury in May 2008, yet it agreed to SWIF's dismissal from the case over two months later. F.F. No. 15; Bd. Op. at 12. This critical finding is directly supported by the computer printout of Travelers' claim notes for this claim. R.R. at 95a-96a. As the Board explained, "[t]his factor weighed heavily in the eyes of the WCJ, and serves to strengthen the application of [Overhead Door]. By comparison, [the carrier] first learned it may not have been the proper carrier in [Overhead Door] more than a year after it informed the WCJ that it believed it provided coverage for a period that encompassed the work injury." Bd. Op. at 12. Further, as the Board stated, the combination of Travelers' May 2008 computer entries and SWIF's appearance at the August 2008 hearing, "should have raised a red flag for Travelers to possibly double check coverage before agreeing to SWIF's dismissal from the litigation. Any internal lack of communication on the part of Travelers as to these items is not a basis for us to disturb the WCJ's [d]ecision." Id. Based on all of these

[8] The hearings occurred in November 2008 and January 2009. With regard to the January 2009 hearing, SWIF's counsel indicated he did not receive notice prior to the hearing, and he appeared at the hearing by "happenstance." R.R. at 18a.

circumstances, we agree with the compensation authorities that Travelers was estopped from denying coverage for Claimant's medical benefits based on our decision in Overhead Door.

Nevertheless, Travelers attempts to distinguish Overhead Door from the case presently before us on two bases. First, Travelers contends that in Overhead Door the claimant would have suffered prejudice if the substitution of carriers was permitted because the claimant would have had to relitigate his claim petition against the other carrier. Here, Travelers asserts, Claimant would suffer no prejudice because the litigation on the UR petition was already final when a decision was rendered on Travelers' review and joinder petitions. In addition, Travelers argues, unlike in Overhead Door, both carriers here issued documents asserting that, although an injury occurred, Claimant was not disabled as a result of that injury.

We reject Travelers' attempts to distinguish Overhead Door on these grounds. First, contrary to Travelers' assertions, while Claimant may not suffer prejudice as a result of a substitution of carriers here, SWIF would suffer prejudice. Specifically, Travelers' actions effectively precluded SWIF from participating in this litigation. As the WCJ determined, Travelers' acceptance of liability compromised SWIF's right to contest liability pursuant to its NCD. WCJ Op., Concl. of Law No. 3. Further, Travelers actions precluded SWIF's participation in the UR process that precipitated Claimant's filing of the UR petition. This Court previously recognized this precise type of due process deprivation in Sunset Golf Course, in which we ordered a remand where a substitution of carriers occurred

after the parties participated in hearings on the claim at issue without the later substituted carrier's participation.

Travelers also points out that both carriers here issued documents indicating that although an injury occurred, Claimant did not suffer any resulting disability, placing both carriers on equal footing. See Forbes Road CTC. However, this argument ignores the fact that, after Travelers issued its Medical Only NCP, it issued an NCP in which it accepted liability for indemnity benefits. Further, prior to the date SWIF issued its qualified NCD, Travelers held itself out as the responsible insurer by commencing payment of Claimant's medical bills, sending Claimant for an IME, issuing Claimant a notice of ability to return to work based on the IME, and requesting a UR of Claimant's medical treatment. Further, about two months after SWIF issued its qualified NCD, Travelers agreed to SWIF's dismissal as a party from the pending litigation, and Travelers continued to litigate the case as though it were the responsible insurer for a period of five months. Thus, the fact that Travelers' Medical Only NCP and SWIF's NCD in which it admitted an injury occurred, but disputed disability, were essentially equivalent based on our decision in Forbes Road CTC does not alter the result here.

Finally, like the Board, we distinguish the cases Travelers cites in support of its argument that this Court permits the liberal substitution of carriers under Section 413(a) of the Act. Specifically, we agree with the Board's observation that the relevant distinction between Overhead Door and the cases cited by Travelers, is that here, as in Overhead Door, the carrier ultimately held

liable entered the litigation contesting an injury or the reasonableness and necessity of medical treatment, rather than responsibility for the claim. Also, here, as in Overhead Door, the carrier ultimately held liable held itself out as the responsible carrier, and, as a result, the case proceeded in litigation without the joinder of the proper carrier. On the other hand, in the cases cited by Travelers, the carriers improperly accepted liability, and either initiated litigation to correct the error through a substitution of carriers, see PMA Group; Birmingham Fire Insurance Co., or defended litigation initiated by a claimant by attempting to join the responsible carriers. Sunset Golf Course; Swartz.

For all the foregoing reasons, we affirm.

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Travelers Insurance Company, Petitioner	:	
v.	:	No. 808 C.D. 2013
Workers' Compensation Appeal Board (State Workers' Insurance Fund), Respondent	:	

O R D E R

AND NOW, this 16th day of December, 2013, the order of the Workers' Compensation Appeal Board is **AFFIRMED**.

ROBERT SIMPSON, Judge