

APPEAL NO. 001816

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 7, 2000. The hearing officer determined that the respondent (self-insured) timely contested compensability of the injury and that the appellant (claimant) sustained a repetitive trauma injury to her neck with a date of injury of _____, in the course and scope of her employment. The claimant appealed; referenced Downs v. Continental Casualty Co.; contended that the self-insured had seven days, not sixty days, to contest the compensability of the injury; and requested that the determinations concerning timely contest of compensability by the self-insured be reversed. The self-insured responded, contended that it complied with the 1989 Act and Texas Workers' Compensation Commission (Commission) rules when it contested the compensability to the injury, urged that the provisions of Downs should not be applied, and requested that the Appeals Panel affirm the determination that it timely contested compensability of the injury. The determination that the claimant sustained an injury to her neck in the course and scope of her employment has not been appealed and has become final under the provisions of Section 410.169.

DECISION

We affirm.

In Texas Workers' Compensation Commission Appeal No. 001717, decided September 7, 2000, the Appeals Panel reversed a decision of a hearing officer that applied the provisions of Downs requiring that a carrier contest the compensability of a claimed injury within seven days of receiving written notice of the claim and rendered a decision that a carrier had 60 days to contest the compensability of the claimed injury. In Appeal No. 001717, *supra*, the Appeals Panel cited Downs v. Continental Cas. Co., No. _____ (Tex. App.-San Antonio August 16, 2000, no pet. h.); stated that the Fourth Court of Appeals in San Antonio in a decision on rehearing did not change from its decision issued on January 26, 2000; and wrote:

On August 28, 2000, the Executive Director of the [Commission], issued Advisory 2000-07 acknowledging the Court of Appeals decision in Downs. However, the advisory states that the "August 16th decision in the *Downs* case should not be considered as precedent at least until it becomes final upon completion of the judicial process." In addition, the Director of the Hearings Division has informed the Hearings Division that the Commission's position is that a carrier has 60 days to contest compensability and that hearings staff are to follow the Commission's position statewide pending resolution of Downs.

We affirm the part of the decision of the hearing officer that the carrier timely contested compensability of the injury.

Tommy W. Lueders
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Susan M. Kelley
Appeals Judge