

APPEAL NO. 002285

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 September 6, 2000. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain an injury in the course and scope of her employment; that the date of injury was _____; that claimant did not have disability; and that claimant timely reported the claimed injury. The hearing officer also determined that respondent (carrier) did not waive its right to contest the compensability of the claimed injury. Claimant appeals the waiver determination and asserts that the injury became compensable as a matter of law due to the carrier's failure to timely contest compensability within seven days. Claimant asserts that, because the injury is compensable as a matter of law, she had disability. Carrier responds that the Appeals Panel should affirm the decision and order. The determinations that claimant did not sustain an injury in the course and scope of her employment, that the date of injury is _____, and that claimant timely reported her injury were not appealed.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that carrier did not waive the right to contest compensability of her back injury and that she did not have disability. The cause of claimant's back injury was in dispute at the hearing and the hearing officer determined that claimant did not sustain the injury at work. As noted by claimant in her brief, it is undisputed that carrier received written notice of the claimed injury on April 26, 1999, and disputed on May 10, 1999, within the 60-day period.

In Downs v. Continental Cas. Co, No. 04-99-00111-CV (Tex. App.-San Antonio August 16, 2000), the Fourth Court of Appeals in San Antonio issued a decision on rehearing determining that a carrier waives the right to contest compensability if it fails to either agree to begin payment of benefits or provide written notice of its refusal to pay within seven days after it receives written notice of an injury. Claimant's argument is that, pursuant to Downs, the carrier has waived its right to contest compensability in this instance because it did not do so within seven days of the date it received written notice of the injury.

On August 28, 2000, the Executive Director of the Texas Workers' Compensation Commission (Commission), issued Advisory 2000-07 acknowledging the Downs decision, but stating 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 final resolution of Downs. The Director of Hearings reissued this directive following the issuance of the

decision on rehearing in Downs. Based on these directives, we conclude that the hearing officer did not err in making her determination that the carrier timely contested compensability under Section 409.021(c) because it contested compensability well within 60 days after it received written notice of the claimed injury. Because we have rejected claimant's assertion that her injury was compensable as a matter of law, claimant's disability argument also fails. Because claimant did not sustain a compensable injury, the hearing officer did not err in determining that she did not have disability.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge