

APPEAL NO. 002690

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 18, 2000. The issues at the CCH were whether the respondent (claimant) had sustained a compensable injury on _____, and had disability therefrom, whether he gave timely notice of his injury to his employer, and whether the appellant (carrier) waived the right to dispute compensability because it did not file a dispute of compensability within 60 days of written notice of injury.

The hearing officer found that the claimant was not credible and did not prove that he sustained an injury, had disability therefrom, or gave timely notice to his employer. However, the hearing officer found that the carrier had waived the right to dispute compensability because it did not prove that it filed a dispute within 60 days after receiving written notice of injury. The hearing officer therefore found that the claimant had a compensable injury due to this reason, and had disability from October 17, 1997, until the date of the CCH.

The carrier has appealed. The carrier asserts that it proved a timely intent to file a dispute to the claimed injury. The carrier also asserts that there was no probative evidence offered of disability, and that the claimant actually worked during much of the time that the hearing officer found for a period of disability. The claimant responds that the decision should be affirmed.

DECISION

Affirmed on waiver issue, reversed and remanded on disability issue.

The claimant contended that he injured his back on _____, when he was working for (employer). As it turned out, this was the last day of the scheduled job, but the claimant denied that he or any of the other workers knew this. He said that he promptly notified his supervisor of an injury. The claimant contended that he was unable to work from that date until June 1, 1998, when he returned to work for another company. He then obtained another job in July 1998 and filed a workers' compensation claim for both _____ and _____. One of these claims also asserted a back injury. The claimant contended he was unable to get medical attention for his injury until after the _____ claimed workers' compensation injuries, and then contended that he qualified for indigent health care. The claimant obtained jobs through his local union; he contended that he was never advised to file a workers' compensation claim by the union when he went to apply for medical treatment through them.

When asked for the period of time that he claimed disability, the claimant identified the period from October 17, 1997, through June 1, 1998. He said that he has been told he will need surgery on his back. The claimant also said that the carrier had "never disputed" the compensability of this _____ injury.

The claimant said he could not recall if he drew unemployment benefits after leaving the employer, but did not think he did. He said that his _____ and _____, workers' compensation claims had been thus far denied but he did not know why.

The waiver issue was given somewhat short shrift during the CCH. The claimant said he made it clear in an interview with the adjuster on December 8, 1998, that he was injured. The records include an Employer's First Report of Injury or Illness (TWCC-1) dated November 30, 1998, contending an _____, injury, although most of the facts were unknown to the employer. The carrier also included in its exhibits a typewritten, unsigned Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated December 10, 1998, but, as the hearing officer pointed out, not date-stamped. This form lists a date of injury of _____, and the nature of the injury is shown as "unknown."

We will affirm the determination that the carrier waived the right to dispute compensability. A dispute is perfected by filing with the Texas Workers' Compensation Commission (Commission). Section 409.021(a)(2). Although the hearing officer expresses some doubt as to whether the TWCC-1 constituted sufficient notice of injury to the carrier, we have held that the TWCC-1 is, by definition, written notice of injury under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1(a)(1) (Rule 124.1(a)(1)) (the version in effect in 1998). Texas Workers' Compensation Commission Appeal No. 962566, decided February 3, 1997. As stated in that decision, the requirement that a document "fairly inform" the carrier of the details of the claimed injury does not apply to the TWCC-1.

The only argued response to the TWCC-1 was a TWCC-21 which does not identify the type of injury and lists a date of injury nearly a year after the asserted injury here. Even were it proven to be filed with the Commission, it is still, at best, ambiguous as to the injury being disputed. For these reasons, we affirm the hearing officer's determination that a timely dispute to compensability was not filed by the carrier and it waived the right to dispute compensability.

We have, however, held that waiver of compensability (that an injury has occurred in the course and scope of employment and was timely reported to the employer) does not foreclose the right of a carrier to dispute issues ancillary to an injury being compensable, such as impairment rating or disability. Texas Workers' Compensation Commission Appeal No. 941052, decided September 19, 1994; Texas Workers' Compensation Commission Appeal No. 971401, decided September 3, 1997. We are struck that the hearing officer's discussion expressly states that the claimant failed to carry his burden of proof on injury, disability, or notice to the employer, yet the hearing officer finds disability beginning October 17, 1997, and continuing through the date of the CCH (notwithstanding the fact that the claimant did not seek disability past June 1, 1998, when he returned to work). The contradiction between the discussion and the findings of fact and conclusions of law on the disability matter, as well as the broad period for which disability was found, persuades us that the hearing officer erroneously interpreted the carrier's waiver as a surrender of its dispute of any ancillary issues in the claim. Because this was error, we

remand so that the hearing officer may determine whether the claimant had disability, irrespective of the waiver of the issue of compensability by the carrier, and if so, for what periods of time between October 17, 1997, and June 1, 1998 (the only period of time for which disability was claimed).

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge