

APPEAL NO. 011946
FILED SEPTEMBER 25, 2001

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 July 2, 2001. The hearing officer resolved the disputed issues by concluding that the appellant (claimant) did not sustain a compensable injury on _____, and therefore did not have a disability; that the claimant did not timely notify her employer of a claimed injury and did not have good cause for such failure; and that the respondent (self-insured) did not waive the right to dispute compensability by failing to timely and adequately file a dispute pursuant to Sections 409.021 and 409.022. The claimant appeals, arguing that it is undisputed that she sustained a serious back injury and that she timely reported her injury or, alternatively, that she had good cause for failure to do so due to trivialization of the injury, being mistaken about the cause of injury, and reliance on the representations of the employer. The claimant additionally argues that the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) disputing her claim was not filed timely by the self-insured or with the required specificity. The self-insured, in its response, contends that the evidence supports the decision of the hearing officer.

DECISION

Reversed and remanded.

The claimant, an administrative assistant at one of the self-insured's public libraries, testified that on Friday, _____, while moving a crate containing books, she felt a "pop" in her back. She testified that she continued to have back pain throughout the following weekend but due to her family history believed the pain was caused by a kidney condition. The claimant testified that she was told by her physician's office on August 1, 2000, that the pain resulted from a problem with her spine not her kidney, and she was sent for x-rays. The claimant further testified that she received the results of the x-rays on August 10, 2000, and on that date she realized the injury was work related. The claimant further testified that she reported her injury of _____, to her supervisor, Mr. Z, on August 16, 2000, and asked if she needed to fill out a report. She said he told her to wait and see what happens. In direct contradiction, Mr. Z testified that the first time he received notice that the claimant was alleging a work related injury was on September 28, 2000, when she approached him after a meeting and told him that her neurosurgeon, Dr. G, told her that her injury was work-related from lifting crates of books. The claimant testified that she knew the importance of accurately filing reports regarding work-related injuries because she herself was a supervisor. She additionally testified that she had completed such reports in the past for employees she supervised. The medical records most proximate to the date of injury reflect that the claimant did not give a history of a work-related injury and, in fact, denied an injury.

The self-insured's TWCC-21 dated November 3, 2000, was admitted as Claimant's Exhibit No. 6 but did not bear a file stamp of the Texas Workers' Compensation Commission (Commission). The claimant alleges that the reasons stated for denial in the TWCC-21 fail to state sufficient grounds for refusal of the claim. The self-insured's TWCC-

21 states as follows:

Carrier disputes compensability of entire claim. Any disability or inability to work is not a direct result of an on the job injury. No good cause has been shown and no documentation exists to substantiate an alleged injury occurred during the course and scope of employment. The alleged injury was not reported within 30 days in accordance with Texas Labor Code 409.001, carrier is relieved of any liability per Texas Labor Code 409.002.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.2(d) (Rule 124.2(d)) provides that "[t]he carrier shall notify the Commission and the claimant of a denial of a claim (Denial) based on non-compensability or lack of coverage in accordance with this section and as otherwise provided by this title." Rule 124.2(f) provides as follows:

Notification to the claimant as required by subsections (d) and (e) of this section requires the carrier to use plain language notices with language and content prescribed by the Commission. These notices shall provide a full and complete statement describing the carrier's action and its reason(s) for such action. The statement must contain sufficient claim-specific substantive information to enable the employee/legal beneficiary to understand the carrier's position or action taken on the claim. A generic statement that simply states the carrier's position with phrases such as "employee returned to work," "adjusted for light duty," "liability is in question," "compensability in dispute," "under investigation," or other similar phrases with no further description of the factual basis for the action taken does not satisfy the requirements of this section.

The claimant also disputes the finding that the self-insured properly and timely disputed the claim pursuant to Section 409.021, relying on Downs v. Continental Casualty Company, 32 S.W.3d 260 (Tex. App.-San Antonio 2000, pet. filed) for the proposition that the contest of compensability must be made within seven days, not 60.

A carrier is required to dispute the compensability of an injury not later than 60 days after receipt of notice of injury, or it will waive its right to do so. Section 409.021(c). Notice of the injury can take any written form but to be effective must fairly inform the carrier of the name of the claimant and employer, the approximate date of the injury, "and information which asserts the injury is work related." Rule 124.1(a)(3). The writing may be from any source. Rule 124.1(c). An employee who contends that a document constitutes written notice of the compensability of a particular injury and that receipt of the document makes the carrier's contest of compensability untimely has the burden of proving when the notice was received. Texas Workers' Compensation Commission Appeal No. 941398, decided December 1, 1994; Texas Workers' Compensation Commission Appeal No. 990307, decided March 24, 1999.

Finally, the claimant argues that the only TWCC-21 of record does not bear a date stamp showing the date it was received by the Commission and that there is no evidence

showing the TWCC-21 has been filed with the Commission at any time. The parties agreed on the record that the hearing officer would review the Commission records to determine the date the TWCC-21 was filed with the Commission and include the date-stamped TWCC-21 as Hearing Officer's Exhibit No. 3. The hearing officer found that the TWCC-21 was filed with the Commission on November 8, 2000, but did not include a file-stamped copy of the TWCC-21 as part of the record.

While the hearing officer found that the TWCC-21 was received by the Commission on November 8, 2000, he failed to make a finding as to the date the self-insured received written notification of the injury. The Appeals Panel has emphasized the importance of findings of specific dates when timely notice and filing matters are in issue. Texas Workers' Compensation Commission Appeal No. 951346, decided September 27, 1995.

Accordingly, we reverse the hearing officer's Decision and Order and remand the case for the hearing officer to further develop the record concerning a copy of the TWCC-21 bearing the Commission's stamped date of receipt. The hearing officer should also make specific findings concerning both the adequacy and the timeliness of the TWCC-21.

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.

The true corporate name of the insurance carrier is **CITY OF SAN ANTONIO** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge