

APPEAL NO. 012307
FILED NOVEMBER 13, 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 (CCH) was held on August 30, 2001. The issues were:

1. Did the claimant [respondent] sustain a compensable injury on _____?
2. Did the claimant have disability resulting from the claimed injury of _____, and if so, for what period(s)?
3. Is the carrier [appellant] relieved from liability under Texas Labor Code Ann. §409.002 because of the claimant's failure to timely notify his employer pursuant to Texas Labor Code Ann. §409.001?
4. Is the claimant barred from pursuing Texas Workers' Compensation benefits because of an election to receive benefits under a group health insurance policy?
5. Was the carrier's second Notice of Refused/Disputed Claim (TWCC-21) [Payment of Compensation or Notice of Refused/Disputed Claim], filed with the Commission [Texas Workers' Compensation Commission] on May 14, 2001, based on newly discovered evidence that could not reasonably have been discovered at an earlier date, or is the carrier's defense on compensability limited to the coverage defense listed on the first [TWCC-21] that was filed with the Commission on May 7, 2001?
6. Is the carrier liable for the payment of accrued benefits under Rule 124.3 [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3] for the period resulting from its failure to dispute or initiate the payment of benefits within seven days of the date it received written notice of the injury and, if so, for what period?

The hearing officer determined that while the claimant's left knee injury was not sustained in the course and scope of employment, it is nonetheless compensable because of the carrier's failure to timely contest compensability; that the claimant had disability from September 4, 2000, to September 6, 2000, and from March 31, 2001, to the date of the CCH; that the claimant did not timely give notice of his injury to the employer and did not have good cause for failing to do so; that the carrier, nonetheless, is not relieved of liability pursuant to Section 409.002 because of its failure to timely contest compensability; that the claimant is not barred by an election of remedies; that the carrier's second TWCC-21 filed with the Commission on May 14, 2001, "was not based on newly discovered

evidence”; that the carrier's defense on compensability is limited to the coverage defense listed on its first TWCC-21; and that the carrier is not liable for the payment of accrued benefits under Rule 124.3. The last issue has not been appealed and has become final pursuant to Section 410.169.

The carrier appealed the adverse findings, principally arguing that it had properly and timely contested compensability of the claimant's claim and that it should be relieved of liability for any of a number of reasons. The file does not contain a response from the claimant.

DECISION

Affirmed.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The carrier made the same arguments it makes on appeal to the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are not incorrect as a matter of law or so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **FREMONT INDUSTRIAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

CONCUR IN THE RESULT:

Elaine M. Chaney
Appeals Judge