

APPEAL NO. 020018
FILED FEBRUARY 21, 2002

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 November 20, 2001. In (Docket No. 1), the hearing officer resolved the disputed issues by deciding that the appellant's (claimant) _____, compensable injury extended to include right carpal tunnel syndrome (CTS), but did not extend to include left CTS. In (Docket No. 2), the hearing officer further determined that the claimant did not sustain a compensable injury in the form of an occupational disease on _____, and that while the respondent (carrier)¹ did not timely contest the compensability of that alleged injury, it did not waive the right to contest the compensability because the claimant did not sustain a compensable injury. The claimant appealed the hearing officer's determinations on sufficiency and legal grounds, alleging that the hearing officer abused her discretion in her interpretation and application of Section 409.021 of the 1989 Act. The carrier responded, urging affirmance and citing Continental Casualty Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.) in support of its argument. Because the determination of extent of injury in Docket No. 1 was not appealed, it has become final pursuant to Section 410.169 of the 1989 Act.

DECISION

Reversed and rendered.

This case involves two separate incidents under two docket numbers: Docket No. 1 dealt with the claimant's _____, injury to her right shoulder, neck, and [now] right CTS; and Docket No. 2 dealt with the claimant's alleged compensable occupational injury in the form of bilateral CTS, of _____. The hearing officer erred in essentially determining that because she did not believe that the claimant sustained a compensable injury _____, then the carrier did not waive its right to contest the compensability of the claimant's alleged injury even though the carrier did not timely contest the matter pursuant to Section 409.021 of the 1989 Act. At the hearing and on appeal, the carrier argued that because the claimant failed to prove that she sustained a new injury² on _____, it did not matter that the carrier did not timely contest the compensability of the claimant's alleged injury. The hearing officer apparently agreed with the argument. The carrier based its argument on the Williamson case, *supra*.

The Williamson case is unique, yet stands for the general proposition that the carrier's failure to timely contest the alleged injury does not create an injury where there

¹As Twin City Fire Insurance is no longer a party to this case, "carrier" herein shall always refer to American Home Assurance Company.

²Injury is defined in Section 401.011(26) of the 1989 Act as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. . . [including] an occupational disease."

is none. The Williamson court said that the carrier only waives the right to contest the *compensability* of the injury alleged. Williamson, 971 S.W.2d at 110 (emphasis added). At the Williamson contested case hearing, the hearing officer determined that the claimant sustained no injury and the Williamson court found that the medical records introduced into evidence showed no injury. The court, quoting Appeals Panel Judge Robert Potts (dissent), held that, because there is no injury to which the “concept of compensability can attach,” Section 409.021 does not apply, as it does not create a compensable injury from a nonexistent injury. Section 409.021 only addresses the carrier’s waiver of its ability to contest the compensability of an existing injury. We have regularly noted that Williamson applies in only the limited circumstance of where there is a determination that the claimant did not have damage or harm to the physical structure of the body, and does not apply to cases, like this one, where the claimant did have injuries that the hearing officer determined not to be causally related to the claimant’s employment [on _____]. See Texas Workers’ Compensation Commission Appeal No. 011735, decided September 5, 2001 (and citations therein).

In this case, it appears that the parties do not dispute that the claimant has right, and probably left, CTS. The claimant testified that she has bilateral CTS and the carrier argued that her medical records showed she does, too, except that the carrier claimed it is an extension of her prior compensable injury.³ Thus, the crux of the dispute here is whether the claimant’s CTS stemmed from her earlier, 1992, compensable injury, or due to repetitive trauma sustained on _____, while the claimant was working for the employer for whom the carrier maintains workers’ compensation coverage. As stated above, the hearing officer found that the claimant’s right CTS was an extension of her 1992 compensable injury, leaving only the determination of compensability for the left CTS. Because of the lack of dispute between the parties regarding the existence of an injury to the claimant and the medical evidence concluding that the claimant has CTS, this case is distinguishable from Williamson. We agree with the claimant’s counsel’s “slippery slope” argument that if the law is as the hearing officer concludes in Conclusion of Law No. 5⁴, the carrier would never have to file a timely dispute.

The hearing officer’s decision is reversed and we render a new opinion that the carrier did waive its right to contest the compensability of the claimant’s injury pursuant to Section 409.021, and that the carrier is liable for the claimant’s left CTS. We specifically reverse the hearing officer’s Finding of Fact No. 7. The parties appear to have agreed that there was damage or harm to the claimant, but disagreed as to causation, leaving the issue of waiver only, as addressed above.

³See TWCC-21. Also, at the CCH, the carrier’s counsel argued that the claimant did have at least right, and probably bilateral, CTS, and cited medical findings in carrier’s exhibit #1.

⁴The hearing officer concluded, “The Carrier did not timely contest compensability of the claimed injury of _____, in accordance with §409.021 Texas Labor Code, but it has not waived the right to contest compensability because the Claimant did not sustain a compensable occupational disease on that date.”

The true corporate name of the carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE I
AUSTIN, TEXAS 78701.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge