

APPEAL NO. 020823  
FILED MAY 29, 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 was held in two sessions on February 12, 2002, and March 13, 2002. With respect to the issues before him, the hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable injury to her knees, but did not sustain a compensable injury to her low back area, on \_\_\_\_\_; that she did not have disability resulting from her injury to her knees; that she timely filed a claim for compensation for an injury because the period for filing the claim was tolled pursuant to Section 409.008; and that she is not barred from pursuing workers' compensation benefits because she did not make an election to receive benefits under a group health insurance policy. In its appeal, the appellant/cross-respondent (carrier) asserts error in the hearing officer's determinations that the claimant sustained a compensable injury to her knees and that the period for filing a claim was tolled under Section 409.008. In her cross-appeal, the claimant appeals the determinations that she did not injure her back in the \_\_\_\_\_, work-related injury and that she did not have disability. In its response to the claimant's appeal, the carrier asserts that the cross-appeal is untimely. In the alternative, the carrier urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury to her knees. That issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. The hearing officer's determination that the claimant sustained a compensable injury to her knees on \_\_\_\_\_, is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse it on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier contends the hearing officer erred in determining that the claimant timely filed her claim. Section 409.003 of the 1989 Act provides that a person shall file a claim with the Texas Workers' Compensation Commission (Commission) not later than one year after the date of injury. The hearing officer determined that the one-year filing period to submit a claim to the Commission was tolled pursuant to Section 409.008. Section 409.005(a) provides that an employer shall report to the carrier if an injury results in the absence of an employee from work for more than one day. Section 409.008 states that "[i]f an employer or the employer's insurance carrier has been given notice or has knowledge of an injury to or the death of an employee and the employer or insurance carrier fails, neglects, or refuses to file the report under Section 409.005, the period for filing a claim for compensation under Sections 409.003 and 409.007 does not begin to run against the claim of an injured employee or a legal beneficiary until the day on which the report required under Section 409.005 has been furnished." In this instance, the hearing

officer determined at the hearing that the claimant did not miss work because of her compensable injury to her knees but rather as a result of her back condition. However, the hearing officer nevertheless determined that the employer's obligation to file a written report of injury under Section 409.005 was triggered when the claimant missed work because of her claimed injury. That is, the employer's obligation to file a written report of injury is triggered when the employee misses work for more than one day due to a claimed injury of which the employer has notice. A subsequent determination that the injury which caused the claimant to miss work is not a compensable injury does not excuse the employer's failure to file the report under Section 409.005. And, as such, the hearing officer did not err in determining that the period for filing a timely claim was tolled in accordance with Section 409.008. *Compare* Texas Workers' Compensation Commission Appeal No. 002220-S, decided November 7, 2000, where we determined that a carrier would be liable for benefits that accrued prior to the date it filed its contest of compensability, where the contest was filed after the seventh day it received written notice of the injury, without regard to the ultimate determination of the compensability issue.

The claimant's cross-appeal is untimely. In accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the claimant was deemed to have received the hearing officer's decision five days after it was distributed, or on April 2, 2002. Pursuant to Section 410.202(a) and (d), for an appeal or a cross-appeal to be considered timely, it must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in the Texas Government Code. The last date for the claimant to have timely filed an appeal in this case was April 23, 2002. The claimant's cross-appeal was postmarked April 27, 2002, and is date-stamped as having been received by the Commission's Chief Clerk of Proceedings on April 30, 2002. Therefore, the claimant's cross-appeal is untimely.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6<sup>TH</sup> STREET  
AUSTIN, TEXAS 78701.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Roy L. Warren  
Appeals Judge