

APPEAL NO. 021068  
JUNE 17, 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 March 29, 2002. The appellant (claimant) appeals the hearing officer's determinations that "the claimant sustained a compensable injury on \_\_\_\_\_, in the nature of an unresolved lumbar sprain/strain and a sprain/strain of the cervical and thoracic spine, which resolved no later than September 26, 2001"; that the Texas Worker's Compensation Commission improperly allowed the claimant to change treating doctor; that the respondent (carrier) did not waive the right to dispute disability after September 25, 2001; and that the claimant had disability as a result of his compensable injury of \_\_\_\_\_, beginning September 26, 2001, and continuing through the date of the CCH. The carrier responds, urging affirmance.

DECISION

Affirmed.

**WAIVER OF DISABILITY**

The carrier stipulated that the claimant sustained a compensable lumbar injury on \_\_\_\_\_. The carrier paid the claimant weekly income benefits until he returned to light-duty employment with the employer on September 20, 2001. The carrier then filed its "Payment of Compensation or Notice of Refused/Disputed Claim (TWCC 21), on September 29, 2001, disputing the claimant's entitlement to disability benefits stating as follows:

Carrier disputes extent of disability based upon conflicting medical. Carrier also disputes change of treating doctor as injured apparently changed for purposes of seeking a different medical report that would change his work status. Injured had previously been released for light duty, was working light duty without any apparent problems and then changed treating doctors.

The claimant contends that the carrier waived the right to dispute disability after September 25, 2001, in accordance with Rule 124.2(f) because the carrier gave an inadequate explanation of why it was stopping benefits. 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 contends that the carrier's grounds for disputing disability are limited to those espoused in its TWCC-21. There is no provision restricting a carrier's right to dispute disability or providing that a carrier may waive its right to dispute disability. We have frequently noted that a claimant can move in and out of disability over time. Texas Workers' Compensation Commission Appeal No. 020480, decided April 15, 2002. A carrier is not limited from disputing subsequent periods of alleged disability. Accordingly, we affirm the hearing officer's determination that the carrier did not waive the right to dispute disability after September 25, 2001.

#### **CHANGE OF TREATING DOCTOR; EXTENT OF INJURY AND DISABILITY**

The claimant contends that the hearing officer erred in determining that the Commission improperly allowed the claimant to change treating doctors; that the claimant's compensable injury "in the nature of an unresolved lumbar sprain/strain and sprain/strain of the cervical and thoracic spine, which resolved no later than September 26, 2001," and that the claimant had disability as a result of the compensable injury beginning on September 26, 2001, and continuing through the date of the CCH.

After review of the record in regard to these issues, we have concluded that there is sufficient legal and factual support for the hearing officer's determinations. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1976).

#### **ADDITIONAL COMPLAINTS**

We have considered the additional procedural and/or evidentiary complaints asserted by the claimant, and the carrier's response thereto, and are satisfied that none of these matters constitute reversible error. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

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

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Roy L. Warren  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge