

APPEAL NO. 021972
FILED SEPTEMBER 23, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on July 9, 2002, the hearing officer resolved the three disputed issues by concluding that the respondent (claimant) sustained a compensable injury while in the course and scope of employment on _____; that the claimant had disability beginning on April 25, 2002, and continuing to the date of the hearing; and that the appellant (carrier) "is liable for payment of accrued benefits under [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §124.3] Rule 124.3 for the period resulting from its failure to dispute or initiate payment of benefits from _____, through May 6, 2002." The carrier has filed an appeal challenging the sufficiency of the evidence to support these determinations. The file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

The claimant testified that on _____, he injured his neck, back, and left leg when a heavy railroad track he was carrying in a muddy tunnel with a coworker struck him on the left thigh and he fell backwards into the mud. Two coworkers witnessed the accident and testified to the same effect. Although there is some conflicting evidence, the claimant's testimony, the testimony of the coworkers, and the medical records sufficiently support the hearing officer's factual findings that on _____, during the course and scope of employment, the claimant sustained an injury to his body when he fell to the ground, landing on his back, after a railroad track struck his left thigh, and, that beginning on April 25, 2002, and continuing to the date of the hearing, the claimant was unable, due to the injury he sustained, to obtain and retain employment at his preinjury wage rate equivalent. These findings sufficiently support the injury and disability determinations and are not 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Turning to the Rule 124.3 issue, the disputed issue was framed as follows: "Is Carrier liable for the payment of accrued benefits under Rule 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 notice of the injury?" In support of his conclusion that the carrier is liable for payment of accrued benefits under Rule 124.3 as a result of its failure to dispute or initiate payment of benefits from _____, through May 6, 2002, the hearing officer found that "[o]n _____, Carrier received written notice of the _____, injury"; that "[o]n May 6, 2002, Carrier filed its dispute of Claimant's allegations of the _____, injury"; and that carrier's "time to comply with Rule 124.3 began to run on _____." The carrier does not challenge the findings

that it received written notice of the claimed injury on _____, and that its time to comply with Rule 124.3 began to run on that date and those findings have become final by operation of law. The carrier does challenge the sufficiency of the evidence to support the finding that it filed its dispute of the claim on May 6, 2002. The carrier asserts that the only copy of the carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) in evidence, offered by the claimant, bears the date of _____, which is, of course, the eighth day after _____, and that in finding that the carrier filed its dispute of the claimant's allegations on May 6, 2002, the hearing officer appears to have relied on Claimant's Exhibit No. 4, a Texas Workers' Compensation Commission (Commission) Texas Compass Claims Forms List bearing the name of some person other than the claimant. The carrier's assertion in this regard is correct and that document does reflect that a TWCC-21 was received on May 6, 2002. However, not only does the carrier not refer to any document upon which it relied to prove the date it disputed the claimed injury, following its _____, receipt of written notice, but goes on to state that "it is the claimant's burden to establish that the carrier failed to comply with Rule 124.3 and the claimant offered no competent evidence to establish the date of filing by the carrier[.]" Generally, the burden of proof is on the carrier to prove it timely contested the compensability of a claimed injury. See, e.g., Texas Workers' Compensation Commission Appeal No. 960974, decided July 8, 1996. And, in the context of pre-Rule 124.3 cases involving the timeliness of a carrier's dispute of the compensability of claimed injuries, the Appeals Panel has generally held that once a claimant has satisfied the burden of proving the date the carrier received written notice of the claimed injury, the carrier then has the burden of proving the date it disputed the compensability of the claimed injury. See, e.g., Texas Workers' Compensation Commission Appeal No. 960974, *supra*.

Our review of the documentary evidence reveals that the carrier's TWCC-21 dated April 12, 2000, the only TWCC-21 in evidence, bears a Commission date stamp reflecting receipt on May 23, 2002. The evidence does not contain a document reflecting an earlier dispute by the carrier. Accordingly, we reform Finding of Fact No. 5 to change the date of the carrier's filing of its dispute from May 6, 2002, to May 23, 2002. We further note that in Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002, a case involving a Rule 124.3 issue among others, the Appeals Panel affirmed the challenged Rule 124.3 determination on the basis of the finality of the Texas Supreme Court decision in Continental Casualty Company v. Downs, Case No. 00-1309 (June 6, 2002) (Motion for rehearing denied August 30, 2002).

We affirm, as reformed, the decision and order of the hearing officer.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge