APPEAL NO. 022446
FILED OCTOBER 30, 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 on September 10, 2002. The hearing officer determined that the claimant had not sustained a compensable repetitive trauma injury in the course and scope of her employment. He found that the date she first knew or should have known that she had an injury that may be related to her employment was _____, and that she timely reported the injury to her employer. He determined, however, that the injury was compensable because the self-insured did not timely pay or dispute the claim as required by Section 409.021 and the case of Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) (the Downs case) and its defense was not based upon newly discovered evidence which could not have been discovered earlier. The self-insured appeals the waiver issue, arguing that it was following the Texas Workers Compensation Commission (Commission) advisory at the time that Downs would not be applied. The self-insured also argues that the date of injury and notice issues were determined against the great weight of the evidence. The claimant has responded that this part of the decision was correct but has appealed the findings that she did not sustain an injury.

DECISION

We affirm the hearing officer's decision.

We have reviewed all the appealed issues and find that the record sufficiently supports every finding. The hearing officer made clear that he did not believe that the claimant's left carpal tunnel syndrome resulted from brief periods everyday of opening and closing car doors. There was evidence that the claimant had been involved in a motor vehicle accident and treated for some of the same type of symptoms she experienced in greater magnitude beginning during Thanksgiving 2001.

Concerning waiver, the hearing officer has correctly applied the Downs, case, *supra*, and his determination that the untimely notice to the employer did not constitute newly discovered evidence are supported in this record. Once the intermediate appellate court had held that the failure to go by the seven-day deadline in Section 409.021 could result in waiver, the self-insured's determination to await the Supreme Court decision without amending its procedures can be characterized as a gamble that was ultimately lost. The basis for defense set out in the Payment of Compensation or Notice of Refund/Disputed Claim (TWCC-21) was that the claimant's condition was an ordinary disease of life and not a work-related injury, which could have been raised in the seven-day period following written notice. There is no doctrine of "detrimental reliance" on the Commission's advisories or rules that would overcome the opinion of

the Texas Supreme Court on the correct interpretation of the 1989 Act. Moreover, Advisory 2002-15 states that it expressly supercedes previous advisories.

The hearing officer's determination that there was not newly discovered evidence on which to base a reopening of compensability on the notice issue is not so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust; in any case, he ruled on the merits against this defense and the waiver issue.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order of the hearing officer on all appealed points.

The true corporate name of the self-insured is **(SELF-INSURED)** he registered agent is

SUPERINTENDENT
(ADDRESS)
(CITY) TEXAS (ZIP CODE).

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge