

APPEAL NO. 022460  
FILED NOVEMBER 14, 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 August 28, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) did not sustain an injury furthering the business interests of the employer; that the injury was the cause of the claimant's inability to obtain and retain employment at the preinjury wage; and that the claimant failed to give timely notice of his injury to the employer pursuant to Section 409.001. The hearing officer also determined that the carrier waived the right to contest the compensability of the claimed injury by failing to timely contest compensability and thereby the claimant's injury became compensable as a matter of law and the claimant had disability from January 23 through August 24, 2002. Ultimately, the hearing officer resolved that the carrier was liable for benefits for the claimant's compensable injury and period of disability because of its waiver under Section 409.021 and the Texas Supreme Court's decision in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002). The carrier argued that Downs was not controlling at the time of the benefit review conference, and that the waiver provisions in Downs did not apply to procedural issues such as the claimant's failure to timely notify his employer. The claimant did not file a response to the carrier's appeal.

DECISION

Affirmed.

The hearing officer did not err in determining that the carrier was liable for the claimant's alleged low back injury and period of disability from January 23 through August 24, 2002, because of the carrier's waiver of its right to contest the compensability of the claimant's injury under Section 409.021 and Downs, *supra*.

The Appeals Panel began applying the standard as outlined in the Downs decision with Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002, the first case to be reviewed after the Downs decision became final. The Texas Workers' Compensation Commission has promulgated TWCC Advisory 2002-15, dated September 12, 2002, advising that the seven-day "pay or dispute" provision of Section 409.021 is now final and all previous advisories are superceded. It was undisputed that the carrier received written notice of the claimant's alleged injury on January 24, 2002, and did not dispute it until February 14, 2002, more than seven days after it received written notice of the alleged injury. Section 409.021 and the waiver provisions in Downs apply and the carrier has waived the right to contest compensability. See Section 409.021(a). We are not adding a new requirement or changing the law, but simply implementing the law as directed by the Texas Supreme Court. Further as pointed out in Texas Workers' Compensation Commission Appeal No. 022446, dated October 30, 2002, once the intermediate appellate court had made

its decision, a carrier's determination to await the Supreme Court decision without amending its procedures is done at its own risk.

The hearing officer did not err in making his compensability and disability determinations despite the claimant's untimely notice of his injury to his employer, as the carrier waived that defense, as well. The carrier's argument that a Downs waiver under Section 409.021 does not apply to procedural matters such as the claimant's failure to timely notify his employer of the injury is without merit. We have held that the carrier's loss of the right to contest compensability includes the loss of its right to assert a defense under Section 409.002 based upon the claimant's failure to give timely notice of injury to his employer. Downs, supra; see also Appeal No. 021944-s; and Texas Workers' Compensation Commission Appeal No. 022027-s, decided September 30, 2002.

After review of the record before us and the complained-of determinations, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

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

**NICHOLAS PETERS  
12801 NORTH CENTRAL EXPRESSWAY, SUITE 100  
DALLAS, TEXAS 75243.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Veronica Lopez  
Appeals Judge

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Robert W. Potts  
Appeals Judge