

APPEAL NO. 022514
FILED NOVEMBER 18, 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 July 26, 2002, and continued on August 27, 2002. The hearing officer determined that the respondent (carrier herein) did not waive the right to contest the compensability of the appellant's (claimant herein) injury by failing to timely dispute compensability; that the claimant's compensable injury only extended to the claimant's left knee; and that the claimant had disability from May 6 through May 27, 2002. The claimant appeals, contending that the hearing officer erred in all three determinations. The claimant specifically argues that the hearing officer erred in not applying the Supreme Court's decision Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) (hereinafter Downs) and in not finding that the carrier had waived its right to contest the compensability of the claimant's injuries by not timely disputing compensability within seven days of receiving written notice of injury. The carrier responds that the Downs decision should not be applied retroactively and requests that we affirm the decision of the hearing officer.

DECISION

Reversed and remanded.

We must reverse the decision of the hearing officer and remand this case because the hearing officer has failed to apply the Supreme Court decision in Downs to the present case. The hearing officer found that the carrier received written notice of the claimant's injury on May 1, 2002, and that the carrier did not file its dispute of the claim until June 26, 2002. The Downs decision clearly interpreted Section 409.021 to mean that a carrier must "pay or dispute" a claim within seven days of receiving written notice of the claim. Here, the carrier clearly failed to either dispute or pay within seven days.

The carrier argues that the Downs decision does not apply to injuries prior to August 30, 2002, when the Texas Supreme Court issued its decision on the carrier's motion for rehearing in Downs. The Texas Workers' Compensation Commission (Commission) had determined that the Commission would not apply the Downs decision until the motion for rehearing process in the Texas Supreme Court had been exhausted. See TWCC Advisory No. 2002-08 (June 17, 2002). However, this did not mean that the Supreme Court's decision in Downs was not a proper statement of the law until after that date. In the Downs decision the Supreme Court interpreted a provision of the 1989 Act (Section 409.021), which had been in effect since January 1, 1991, the effective date of the 1989 Act. In no way can requiring the carrier to follow the provisions of the 1989 Act, which has been in effect for the effective date of the Act, be considered a retroactive application of the 1989 Act. Consequently, the Appeals Panel applied the Supreme Court's decision in Downs to all cases coming before us since August 30,

2002. See Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002; Texas Workers' Compensation Commission Appeal No. 022460, decided November 14, 2002.

As the hearing officer has failed to apply the Downs decision in the present case, we must reverse his decision. As applying the Downs decision will of necessity require that the hearing officer reconsider his findings in regard to the other issues before him, we must remand this case. The hearing officer may make further findings of fact and conclusions of law, as necessary, with regard to these issues.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

**PRENTICE-HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge