

APPEAL NO. 022661  
FILED NOVEMBER 19, 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 17, 2002. The hearing officer determined that appellant (claimant) did not sustain a compensable injury, that claimant did not have disability, and that respondent (carrier) timely contested the claimed injury in accordance with Section 409.021. Claimant appealed the determinations regarding injury, disability, and carrier waiver and also contends that the hearing officer erred in admitting certain evidence. Carrier responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and remand in part and reverse and render in part.

We will first address a matter which is dispositive in this case. Section 409.021(a) provides that the insurance carrier is to begin the payment of benefits or notify the Texas Workers' Compensation Commission (Commission) and the claimant of its refusal to pay benefits within seven days after receiving written notice of the injury (the "pay or dispute" provision). On August 30, 2002, the Texas Supreme Court denied a carrier's motion for rehearing in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), and as such, the Downs decision, along with the requirement to strictly adhere to the seven day "pay or dispute" provision is final. In this case, the hearing officer did not make an express determination regarding the date carrier received written notice of the injury. However, carrier offered a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) into evidence that stated that carrier received written notice of the claim on August 13, 2001. At the benefit review conference, carrier's position was that it "timely contested the injury on 9-25-01." The TWCC-21s contained in the record do not show that carrier contested the claim on an earlier date and carrier did not contend that there was a TWCC-21 filed on an earlier date. September 25, 2001, is more than seven days after August 13, 2001. Carrier therefore did not comply with the requirements of Section 409.021(a) by either initiating benefits or filing a dispute. Carrier thus lost its right to contest the compensability of the back injury. See Texas Workers' Compensation Commission Appeal No. 022027-s decided September 30, 2002. We reverse the hearing officer's determination that claimant did not sustain a compensable injury and render a decision that claimant's claimed back injury is compensable as a matter of law.

We note that claimant's argument at the hearing regarding waiver was that the TWCC-21 was not adequate, not that it was not timely filed. However, the issue of waiver was raised at the hearing and it was incumbent upon carrier to establish that it timely contested the claim by offering a TWCC-21 showing such a timely contest. However, it does not appear from the claim file that such a TWCC-21 exists.

Claimant contends that the hearing officer erred in admitting the decision and order of another hearing officer related to another claim filed by claimant. That claim

concerned a claimed injury to claimant's wrists and elbow. Apparently, the two claims started out as one claim, then were split into two claims. Even if the admission of this document could be considered error under the facts of this case, any error was harmless because the evidence regarding that decision was otherwise admitted at the hearing. Texas Workers' Compensation Commission Appeal No. 012924, decided January 22, 2002.

Claimant also contends that the hearing officer erred in admitting the transcript of the prior hearing in the case regarding the alleged injury to the wrists and elbow. Carrier admitted that it did not timely exchange this document. Carrier asked the hearing officer to consider the evidence in the transcript on the merits of the claim for the back injury. Different witnesses testified at the prior hearing and the claimed back injury was discussed. It was error to admit this transcript because it was not timely exchanged. Section 410.160. We note that claimant also contends that the hearing officer erred in determining that she did not sustain a compensable injury. We have rendered a decision that carrier waived the right to contest the compensability of the claimed back injury and this injury is, therefore, compensable as a matter of law.

Claimant also contends that the hearing officer erred in determining that she did not have disability. Given our decision that the claimed injury is compensable as a matter of law, we must reverse the hearing officer's disability determination and remand for reconsideration of the disability determination. In reconsidering the issue of disability, the hearing officer is not to consider the transcript of the prior proceeding regarding claimant's wrists and elbow.

We reverse the hearing officer's determination that claimant did not sustain a compensable injury and render a decision that the claimed back injury is compensable as a matter of law. We reverse the hearing officer's determination that carrier timely contested the claimed injury and render a decision that carrier waived the right to contest the claimed injury in this case. We reverse the hearing officer's disability determination and remand for further proceedings consistent with this decision.

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.

According to information provided by carrier, the true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Michael B. McShane  
Appeals Panel  
Manager/Judge