

APPEAL NO. 022983
FILED JANUARY 10, 2003

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 October 28, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____; that the claimant has resulting disability from March 21, 2002, through the date of the hearing; and that the appellant (carrier) waived the right to contest the claimed injury by not contesting the injury in accordance with Section 409.021. The carrier appealed the hearing officer's injury, disability, and waiver determinations. The appeal file does not contain a response from the claimant.

DECISION

Affirmed as reformed in part and reversed and rendered in part.

INJURY AND DISABILITY

The claimant testified that she sustained a neck injury due to the constant flexion of her neck while performing her work duties as a document scanner. The hearing officer determined that the claimant sustained a compensable injury and that she had resulting disability. Injury and disability issues are questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's injury and disability determinations are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We reform Conclusion of Law No. 4 and the Decision paragraph to correct a clerical error and change the date therein from "December 13, 2001," to
"_____."

CARRIER'S WAIVER

The hearing officer erred in determining that the carrier waived the right to contest the claimed injury by not contesting the injury in accordance with Section 409.021. 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). The hearing officer determined that the carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) filed on January 15, 2002, is "statutorily inadequate." The hearing officer explained in

the Statement of the Evidence that the carrier's TWCC-21 does not adequately identify the claim because it lacks the identification of the employer, nature of injury, notice to the carrier, and receipt of the carrier's first written notice of injury. On appeal, the carrier argues that the TWCC-21 identifies the claimant and the date of her alleged injury, thus the carrier has met its obligation under Section 409.021 and has not waived its right to contest the compensability of the claimed injury. We agree.

The hearing officer found that the carrier received written notice of the claimant's claim on January 13, 2002 (supported by other evidence). The evidence indicates that the carrier filed its TWCC-21 on January 15, 2002, via electronic mail acknowledging receipt of written notice of the claimed injury and that it would pay the claimant benefits. The carrier subsequently prepared a second TWCC-21 dated March 4, 2002, and filed it with the Commission on the same date, indicating that it had investigated the claimed injury and was denying that the claimant sustained an injury in the course and scope of her employment. It is undisputed that the carrier agreed to begin the payment of benefits within seven days after receiving written notice of the injury in accordance with Section 409.021. We agree that the carrier met the "deadline" of seven days to pay or dispute established by Section 409.021, and discussed by the Texas Supreme Court in its decision in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002). The carrier complied with the requirements of Section 409.021(a) by either initiating benefits or filing a dispute.

In Texas Workers' Compensation Commission Appeal No. 022375-s, decided October 31, 2002, the claimant argued that although the carrier's TWCC-21 agreed to pay the disputed claim, the carrier failed to "pay or dispute" compensability because it had not commenced payment of benefits. The Appeals Panel disagreed with the claimant's argument and explained that "entitlement may or may not occur for some time after an injury, depending upon such matters as whether the claimant misses any time from work, the availability and use of light duty at preinjury wages, use of sick leave or vacation time, wage continuation plans, or intermittent periods of missed work, just to specify some of the variables." The Appeals Panel held that the carrier complied with the requirements of Section 409.021(a) by agreeing to payment of benefits, as indicated on the carrier's TWCC-21.

In the instant case, the hearing officer determined that the carrier's TWCC-21 filed on January 15, 2002, was "statutorily inadequate" because it failed to identify the disputed claim; however, the carrier's TWCC-21 indicates that it is clear which claim was being referenced by: the identification of the claimant's name; the claimant's social security number; the date of injury; the date of the notice; the carrier's name; the carrier's address; and the carrier's claim number. Section 409.021 does not provide a list of identification requirements to initiate payment of benefits or dispute compensability as erroneously determined by the hearing officer. The carrier complied with Section 409.021 by agreeing to initiate payment of benefits within seven days as indicated on the TWCC-21, specifically that it "[certifies] benefits will be paid as accrued Art. 8308-5.21 [Section 409.021]."

Accordingly, we reverse the hearing officer's determination that the carrier waived the right to contest the claimed injury by not contesting the injury in accordance with Section 409.021 and render a decision that the carrier did not waive the right to contest the claimed injury in this case.

The hearing officer's decision and order is affirmed as reformed in part and reversed and rendered in part.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY** and the name and address of its registered agent for service of process is

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge