

APPEAL NO. 030275
FILED MARCH 17, 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 (CCH) was held on January 2, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (carrier) waived the right to contest compensability of the claimed injury by not disputing the claim within 7 days in accordance with Section 409.021 and 409.022; that the respondent (claimant) sustained a compensable injury; and that as a result of her compensable injury the claimant had disability beginning on August 6, 2002, and continuing through the date of the CCH. The carrier appealed, arguing that the waiver, compensable injury, and disability determinations are not supported by the evidence, or alternatively are against the great weight and preponderance of the evidence. The carrier additionally disputes the finding of fact that the claimant sustained damage or harm to the physical structure of her body and the finding that due to the claimed injury, the claimant was unable to obtain or retain employment at wages equivalent to the claimant's preinjury wage beginning on August 6, 2002, and continuing through the date of the hearing. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the carrier did not initiate payments of benefits or dispute the claimant's claim within 7 days of the date the carrier received notice of the claim. Section 409.021(a) requires that a carrier either begin payment of benefits or dispute compensability within 7 days of first receiving written notice of an injury or waive its right to dispute compensability. See Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002).

The hearing officer specifically found that "[t]he Claimant sustained damage or harm to the physical structure of her body, to-wit: the L4-5 and L5-S1 levels of her lumbar spine." An MRI taken after the date of the claimed injury showed evidence of an injury as defined in Section 401.011(26). This finding is supported by sufficient evidence. However, the hearing officer also specifically found that "[o]n _____, the Claimant did not sustain damage or harm to the physical structure of her body." The carrier argues that this finding raises an application of Continental Casualty Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.). In Williamson, the court held that "if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law." The Appeals Panel has previously recognized that Williamson is limited to situations where there is a determination that the claimant did not have an injury, that is, no damage or harm to the physical structure of the body, as opposed to cases where there is an injury which was determined by the hearing officer not to be causally related to the

claimant's employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002. In Texas Workers' Compensation Appeal No. 000604, decided May 10, 2000, the Appeals Panel stated:

We have interpreted Williamson to mean that a carrier's failure to timely dispute does not create an injury only when there is no injury. If the claimant has established a condition that meets the definition of injury under Section 401.011(26), it does not matter that the cause of the injury may be outside the course and scope of employment because causation is no longer in dispute when a [Payment of Compensation or Notice of Refused/Disputed Claim] TWCC-21 has not been timely and properly filed.

The claimant testified that she injured her low back on _____, while unloading a trailer and placing boxes of men's clothing onto a pallet. The evidence reflected that the claimant sought medical treatment on _____, and an MRI taken subsequent to _____, showed "a tiny tear in superior central annulus fibrosus" at the L5-S1 level and a "moderately large tear involving central and inferior annulus fibrosus" at the L4-S5 level. It was undisputed that the claimant sustained back pain 12 to 18 months prior to the date of injury at issue. However, the claimant testified that she did not miss any time from work and went to see a chiropractor only 3 times. The claimant testified that she worked at least 50 hours a week until the incident of _____. The claimant's treating doctor opined in correspondence dated October 2, 2002, that "the _____, injury though located in the same area of the spine, is in fact a separate and new injury."

The hearing officer specifically found that the claimant sustained damage or harm to the physical structure of her body. This case is distinguishable from Williamson, supra, because in the instant case the hearing officer specifically found an injury. The hearing officer's finding that no damage or harm was sustained on _____, does not necessitate reversal of the conclusion that the carrier waived the right to contest compensability of the claimed injury. We do not read Williamson to require proof of damage or harm on the specific date alleged.

As to the issue of disability, this presented a question of fact for the hearing officer to resolve. The claimant testified that she has not worked since August 6, 2002, and did not earn any wages since that time. There was testimony from the general manager for the employer that the claimant received salary continuation for a period of 12 weeks but no specific dates were given. Nothing in our review of the record indicates that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Roy L. Warren
Appeals Judge