

APPEAL NO. 030278
FILED MARCH 13, 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 15, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____; that the appellant (carrier) waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021; and that the claimant had disability on August 12, 2002, on August 16 through September 10, 2002, and again on October 19, 2002, through the date of the CCH. The carrier appealed, arguing that the hearing officer's decision is against the overwhelming weight and preponderance of the evidence. The claimant responded, urging affirmance.

DECISION

Affirmed.

The hearing officer found that the carrier first received written notice of the claimed umbilical injury on August 12, 2002, and that the carrier disputed the claimed umbilical injury of _____, on August 21, 2002. These findings of fact were not appealed. The hearing officer concluded that the carrier waived its right to contest the compensability of the claimed injury by not timely contesting an injury in accordance with Section 409.021.

The carrier's appeal asserts that the seven-day "pay or dispute" provision contained in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), does not apply to the facts of this case. In support of its position, the carrier asserts that that the claimant's condition was an ordinary disease of life, which is specifically excluded from the statutory definition of occupational disease and thus the definition of injury. Therefore, the carrier argues that it has not waived its right to contest compensability of an injury under Section 409.021, because there can be no injury as a matter of law. The carrier's appeal cites Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.), in support of its position that the hearing officer erred in determining that the claimant does have a compensable injury.

In the Downs case, the Texas Supreme Court determined that under Sections 409.021 and 409.022, a carrier that fails to begin benefit payments, as required by the 1989 Act, or send a notice of refusal to pay within seven days after it receives written notice of injury, has not met the statutory requisite to later contest compensability. On August 30, 2002, the Texas Supreme Court denied the motion for rehearing in the Downs case. Thus, the Downs decision, along with the requirement to adhere to the seven-day "pay or dispute" provision of Section 409.021(a), became final. Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002.

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 Commission 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.

In the instant case, the claimant claimed an injury from performing a work activity. The hearing officer found that the claimant was not injured in the course and scope of his employment; he did not find that the claimant has no injury. In fact, the hearing officer made findings of fact that the claimant did suffer an umbilical fistula and associated infection, and that as a result of the claimant’s umbilical fistula and associated infection, he has been unable to obtain and retain employment at wages equivalent to his preinjury wage on August 12, 2002, beginning again on August 16 through September 10, 2002, and beginning again on October 19, 2002, through the present. Thus, we conclude that Williamson does not apply to the facts of this case because the claimant has physical harm or damage.

Since the carrier did not agree to initiate benefits, or dispute compensability within seven days after it received written notice of injury, it did not meet the statutory requisite of Section 409.021(a) to later contest compensability. The claimant’s injury has thus become compensable as a matter of law, and the hearing officer did not err in determining that the claimant did sustain a compensable injury. Appeal No. 021944-s, *supra*.

As to the issue of disability, this presented a question of fact for the hearing officer to resolve. 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
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge