

APPEAL NO. 030363  
FILED APRIL 4, 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 January 6, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury with a date of injury of \_\_\_\_\_; that the claimant did not have disability because there was no compensable injury; and that the respondent (self-insured) has not waived the right to contest compensability of the claimed injury by timely contesting the injury in accordance with Section 409.021. The claimant appealed, asserting that the hearing officer erred in determining that the self-insured did not waive the right to contest compensability, that she does not have a compensable injury, and that she did not have disability. The self-insured responded, urging affirmance.

DECISION

Reversed and rendered.

We will first address the self-insured waiver issue, as it is dispositive to the outcome of the claimant's appeal. It is undisputed that the self-insured received first written notice of the claim on June 1, 2001. The self-insured's adjuster testified, and the claimant did not dispute, that the self-insured commenced payment of benefits (in this case medical benefits as there was no lost time at the outset of the claim) in accordance with the 1989 Act. The claimant submitted into evidence a copy of a Payment of Compensation or Notice of Refused/Disputed Claim form (TWCC-21) disputing the claim in question, which was sent by the self-insured, and stamped as received by the Texas Workers' Compensation Commission (Commission), on September 7, 2001. This particular TWCC-21 indicates the date of notice is July 9, 2001, but at the bottom it is dated September 7, 2001. The claimant also submitted into evidence a printout from the Commission's COMPASS notes, which indicates that no TWCC-21 disputing this claim was filed with the Commission until September 7, 2001. The claimant testified that she was uncertain when she first learned that the self-insured was disputing the claim, but that it could have been sometime in early September 2001. She testified that she first learned of the dispute from her doctor. Interestingly, a doctor's note dated September 10, 2001, indicates that the claimant is anxious and angry because "[a]pparently, her claim is being denied." The self-insured submitted a TWCC-21 disputing the claim into evidence. This TWCC-21 does not have a Commission file stamp on it, and is otherwise identical to the one submitted into evidence by the claimant except that the date on the bottom of the form is July 9, 2001. The self-insured additionally submitted into evidence a 2-page printout from its computer system, which purportedly shows that a TWCC-21 disputing this claim was electronically transmitted to the Commission on July 9, 2001. The self-insured's adjuster testified that the TWCC-21 was electronically transmitted to the Commission on July 10, 2001, that 2 copies of the dispute were delivered to the Commission via courier that same day (one copy was to

be stamped and returned to him and placed in the file), and that the TWCC-21 was also mailed to the claimant (the claimant testified that she never received it). The adjuster testified that he has looked for the copy, which was allegedly date stamped by the Commission and returned to him, but that he can't find it. The self-insured offered no evidence from the Commission's file that the TWCC-21 disputing the claim was received prior to September 7, 2001.

In the case before us, the self-insured commenced the payment of benefits promptly and in accordance with the 1989 Act. By doing so, pursuant to Section 409.021(c) the self-insured had 60 days from June 1, 2001, the date it received first written notice of the claim, to investigate and dispute the claim. Once the self-insured decided to dispute the claim, they were required to notify the Commission and the employee in writing of its denial of the claim. Section 409.021(a)(2).

Based upon the record of this case, we find that the hearing officer's determination that the self-insured timely disputed the claim on July 10, 2001, is not supported by sufficient evidence to be affirmed, and therefore it is reversed and a new decision is rendered that the self-insured did not timely contest the injury in accordance with Section 409.021. The claimant presented a copy of the self-insured's TWCC-21, with a Commission date stamp affixed to it indicating that the Commission received it on September 7, 2001. The claimant additionally submitted a Commission record showing that the first dispute of this claim was received by the Commission on September 7, 2001, and testified that she thought she first received notice of the self-insured's dispute from her doctor's office which may have been in early September 2001. The self-insured presented no evidence from the Commission as to when the self-insured's TWCC-21 was received by the Commission. The self-insured's adjuster testified that he couldn't find the date-stamped copy of the TWCC-21 from the Commission, offered no computer entries, or any evidence at all, from the Commission indicating that such a document was in fact received by the Commission on the date claimed, and offered no showing as to any efforts made by the self-insured to obtain evidence from the Commission to support its position regarding the date it first disputed the claim. The only written documentation evidencing the date on which the self-insured filed its dispute of the claim with the Commission is the TWCC-21, which was stamped by the Commission as filed on September 7, 2001, and the accompanying COMPASS notes. In short, we find that the hearing officer's determination that the self-insured timely disputed the claim is against the great weight of the evidence. To find otherwise would be to accept that the self-insured's adjuster, the Commission, and the claimant all lost the same document in the same claim file.

Because the self-insured has waived the right to contest compensability of the claimed injury by failing to contest the injury in accordance with Section 409.021, we render a decision that the claimant did sustain a compensable repetitive trauma injury with a date of injury of \_\_\_\_\_, and based upon the hearing officer's Findings of Fact, that she did have disability from July 2, 2001, through the date of the hearing.

The hearing officer's decision is reversed and a new decision is rendered that the claimant did sustain a compensable repetitive trauma injury with a date of injury of \_\_\_\_\_; that she had disability from July 2, 2001, through the date of the hearing; and that the self-insured has waived the right to contest compensability of the claimed injury by failing to timely contest the injury in accordance with Section 409.021.

The true corporate name of the insurance carrier is **UNIVERSITY OF TEXAS SYSTEM (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**JAVIER GARZA, WCI MANAGER  
201 WEST 7TH STREET, ASH 414  
AUSTIN, TEXAS 78701-2981.**

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Daniel R. Barry  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

DISSENTING OPINION:

The majority has stated that, "The self-insured presented *no evidence from the Commission* as to when the self-insured's TWCC-21 was received by the Commission." [Emphasis added.] However, evidence from the Commission is not required to prove that a document was filed with the Commission; at least not until now. The majority also points out that:

The self-insured additionally submitted into evidence a 2-page printout from its computer system, which purportedly shows that a TWCC-21 disputing this claim was electronically transmitted to the Commission on July 9, 2001. *The self-insured's adjuster testified that the TWCC-21 was electronically transmitted to the Commission on July 10, 2001, that 2 copies of the dispute were delivered to the Commission via courier that same day* (one copy was to be stamped and returned to him and placed in the file), and that the TWCC-21 was also mailed to the claimant (the claimant testified that she never received it).

Our established precedent is that such evidence from an adjuster is indeed evidence that a document was filed with the Commission. Texas Workers' Compensation Commission Appeal No. 992910, decided February 3, 2000. The hearing officer, as fact finder, believed the evidence from the self-insured regarding filing in this case.

Today, the majority is saying that the hearing officer is not permitted to believe such testimonial evidence from an adjuster. The majority apparently requires proof from the Commission of actual receipt of any document filed. However, in Appeal No. 992910, *supra*, as well as in many other cases, we have said that testimony regarding the filing of a document with the Commission is evidence of the filing and that the hearing officer may consider it.

In this case there clearly is conflicting evidence regarding whether a certain TWCC-21 was filed. We are now apparently saying that a hearing officer just may not believe testimonial evidence of filing under these facts. However, in my opinion, whether the TWCC-21 was filed was merely a fact issue for the hearing officer to consider and decide. We should leave such matters to our hearing officers to decide rather than deciding them, as we have here, as a matter of law.

I note that the majority also indicates that a party must now show that it made "efforts" to obtain evidence from the Commission to support its position regarding the date it first disputed the claim. This is an additional evidentiary burden not previously required.

I would assume that the hearing officer checks the file to make sure documents claimed to be filed are or are not in the file. Hearing officers may do this in order to develop the record and may admit such a filed document like a TWCC-21 on his or her own motion if it is in the file. Texas Workers' Compensation Commission Appeal No. 010696, decided April 26, 2001. It is not clear to me what efforts a party must now prove they made beyond checking the claim file itself to see if a document is in the file. I assume that a party must now obtain a copy of some computer records from the Commission that purports to show the filing of all documents. It is also not clear to me what would be the effect of testimony from the adjuster that "efforts were made" and the Commission was contacted at some point to see if the document could be found. It is not clear to me how the "showing of efforts" now required by the majority could be so crucial to the fact issue of whether something was filed. Even if proof of such now-required "efforts" was obtained, it still seems to me that a mere fact issue is involved here.

I would follow Appeal No. 992910, and I would affirm.

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Judy L. S. Barnes  
Appeals Judge