APPEAL NO. 030430
FILED APRIL 7, 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 21, 2003. The hearing officer determined that the respondent (claimant herein) did not injure himself in the course and scope of his employment, but that the claimant had a compensable injury on _____, because the appellant (self-insured herein) waived its right to contest compensability as a matter of law because it failed to pay benefits or dispute compensability within seven days of receiving written notice of injury. The self-insured appeals, contending that no notice of written injury was received on May 1, 2002, as found by the hearing officer and that it had no duty to dispute injury when the claimant was not injured in the course and scope of his employment. The claimant responds that the self-insured represented that it received written notice of injury on May 1, 2002. The claimant also argues that the self-insured did have a duty to pay or dispute because the evidence established that the claimant had physical damage or harm to his body and that the hearing officer's double negative found no injury in the course and scope of employment rather than simply "no injury."

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

In evidence is the self-insured's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) in which the self-insured disputed that the claimant suffered an injury in the course and scope of employment because the claimant's injury was an ordinary disease of life and continuation of the preexisting condition of the claimant's back. The TWCC-21, dated May 9, 2002, states on it face that the self-insured's first written notice of injury was received on "5/1/02" and is date-stamped received by the Texas Workers' Compensation Commission (Commission) on May 9, 2002. We find it incongruous that the self-insured now seeks to impeach its own Commission filing by arguing that it did not receive written notice of the injury on May 1, 2002. We find that there is sufficient evidence in the record to support the factual finding of the hearing officer that the self-insured received written notice of injury on May 1, 2002.

Section 409.021 provides that the insurance carrier, or self-insured in this case, shall not later than the seventh day after the date on which the insurance carrier receives written notice of an injury begin the payment of benefits or notify the Commission and the injured employee in writing of its refusal to pay. The Supreme Court of Texas in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) (hereinafter Downs) held that the failure of a carrier to comply with the pay or dispute provision resulted in the carrier waiving its right to contest compensability. In Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11,

2002, the Appeals Panel held that the Downs decision applied to cases where carrier waiver was in issue and which came to the Appeals Panel after August 30, 2002, the date the Downs decision became final.

The self-insured argues that these provisions do not apply in the present case because of the holding in Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.) (hereinafter Williamson). In Williamson the Tyler Court of Appeals held 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. We agree with that proposition; however, we find it is not applicable in this case. We have previously recognized that Williamson is limited to situations where there is a determination that the claimant did not have an injury as defined in Section 401.011(26)[1], as opposed to cases such as this, where there is an injury which was determined by the hearing officer not to be causally related to the employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002; Texas Workers' Compensation Commission Appeal No. 022450, decided November 8, 2002. To interpret Williamson in the way the self-insured argues would in essence mean that waiver would only apply to cases in which the claimant would have won absent waiver, which would in effect render Section 409.021 and the Downs decision meaningless. In a long and unbroken line of cases, the Appeals Panel has rejected such an interpretation. We continue to do so.

[1] Which in relevant part defines injury as, "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm."

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance self-insured is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.

For service by mail the address is:

RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Roy L. Warren
Appeals Judge