

APPEAL NO. 030697
FILED APRIL 30, 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 29, 2003. The hearing officer determined that (1) the appellant (claimant) did not sustain a compensable injury on _____; (2) the claimant did not have disability; and (3) the respondent (self-insured) did not waive the right to dispute the compensability of the claimed injury pursuant to Section 409.021. The claimant appeals these determinations, asserting that the self-insured waived its right to dispute the claimed injury by failing to timely submit a Payment of Compensation or Notice of Refused/Disputed Claim ("cert-21") and serve a copy on the claimant. The self-insured urges affirmance.

DECISION

Affirmed.

The claimant was a bus driver for the self-insured. On _____, while at a stop, the claimant's bus was struck by another vehicle. The claimant testified that he felt a jolt and was informed of the motor vehicle accident (MVA) by the driver of the other vehicle. An examination of the bus revealed "a lot of scratches" but no major damage. None of the passengers on the bus were injured in the accident. The claimant contacted his dispatcher and reported "that there was a car that had hit me from behind." Later, the claimant's supervisor and police arrived on the scene. The claimant, again, reported the accident but did not report an injury. At the end of his shift, the claimant filled out an incident report with his employer concerning the MVA. The claimant did not report an injury at that time. Indeed, the claimant testified that he first experienced back pain the following morning. He continued working through the end of the week. The claimant testified that he reported an injury to his employer on Monday, September 16, 2002, and sought medical treatment. He was subsequently diagnosed with a herniated disc at L5-S1 and taken off work. On September 17, 2002, the self-insured forwarded a "cert-21" to the Texas Workers' Compensation Commission (Commission), certifying that it would pay benefits as they accrue. On September 24, 2002, the self-insured disputed an injury in the course and scope of claimant's employment.

As stated above, the claimant asserts that the self-insured waived its right to dispute the claimed injury by failing to submit its "cert-21" within 7 days after receiving notice of the claimed injury.

The claimant argues that the self-insured had sufficient notice to trigger the 7-day period for accepting or disputing the claimed injury, when it learned, on _____, that the claimant was involved in an MVA.¹ Section 409.021(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1(a) (Rule 124.1(a)) require receipt of written notice of an *injury* to trigger the 7-day pay or dispute period.² The evidence shows that the self-insured did not receive notice of an injury on _____, but was only informed of an MVA. The claimant, by his own admission, did not give notice of an injury until September 16, 2002. The self-insured submitted its “cert-21” accepting the claimed injury one day later, on September 17, 2002. In view of the evidence, the hearing officer did not err in determining that the self-insured timely filed its “cert-21,” thereby entitling it to a 60-day period to further investigate and dispute the claimed injury.

The claimant also asserts that the self-insured waived its right to dispute the claimed injury by failing to serve a copy of the “cert-21” on the claimant. The claimant cites, in support of his position, Section 409.021(a) and Texas Workers’ Compensation Commission Appeal No. 023262, decided February 19, 2003. Section 409.021(a) provides, in part, that an insurance carrier shall, not later than the seventh day after the date on which an insurance carrier receives written notice of an injury, begin the payment of benefits as required by this subtitle *or notify the Commission and employee in writing of its refusal to pay*. In Appeal No. 023262, we held that a carrier’s failure to notify a claimant in writing of its refusal to pay benefits, not later than the seventh day after its receipt of written notice of injury, constituted waiver under Section 409.021. We do not read Section 409.021(a) and Appeal No. 023262 to require that a carrier give written notification to the claimant, within a 7-day period, when the carrier agrees to accept a claimed injury, as in this case. Rather, the treatment of “cert-21s” is currently addressed in Texas Workers’ Compensation Commission Advisory No. 2002-15, dated September 12, 2002, which requires only that a carrier forward its “cert-21” to the Commission. See *also* Texas Workers’ Compensation Commission Appeal No. 030380-s, decided April 10, 2003. Accordingly, the hearing officer did not err in determining that the self-insured did not waive its right to contest compensability of the claimed injury.

The claimant’s challenge of the injury and disability determinations is premised upon the success of his appeal of the waiver issue. Given our affirmance of the waiver determination, we likewise affirm the hearing officer’s injury and disability determinations.

¹ The claimant argues that verbal and actual notice are sufficient forms of notice to trigger the 7-day period in Section 409.021. We note that Section 409.021 and Rule 124.1 expressly require written notice of an injury be provided to a carrier. Because the claimant did not give any notice of an *injury* on _____, we need not address this issue further.

² In the context of Section 409.001, regarding Notice of Injury to an Employer, we have said that notice, to be effective, needs to inform the employer of the general nature of the injury and the fact it is job related. See Texas Workers’ Compensation Appeal No. 030124, decided March 7, 2003, citing DeAnda v. Home Ins. Co., 618 S.W.2d 529, 533 (Tex. 1980).

The decision and order of the hearing officer are affirmed.

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

**JG
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Roy L. Warren
Appeals Judge