

APPEAL NO. 030758  
FILED MAY 14, 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 February 20, 2003. The hearing officer determined that the appellant (carrier) waived the right to dispute compensability of the claimed injury by not doing so in accordance with Sections 409.021 and 409.022; that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; that at the time of the injury the claimant was not in a state of intoxication, as defined in Section 401.013; and that the claimant had disability from \_\_\_\_\_, through the date of the hearing. The carrier appeals this decision. The claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the carrier waived its right to dispute compensability of the claimed injury by not doing so in accordance with Sections 409.021 and 409.022. The evidence reflects that the carrier received written notice of the injury on the day that it occurred, \_\_\_\_\_. The hearing officer determined that the carrier waived the right to contest compensability of the claimed injury by not paying benefits or disputing the claim within seven days of receiving written notice of the injury. The hearing officer explained that the carrier's failure to inquire about the drug test for a period of time did not constitute newly discovered evidence. Nothing in our review of the record indicates that the hearing officer's waiver 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).

The carrier argues that even if it waived compensability of the claimed injury, it has not waived the right to raise a defense to liability based on the intoxication defense provided for in Section 406.032(1)(A). We disagree. A carrier that waives its right to contest compensability cannot avail itself of the right to assert an intoxication defense under Section 406.032(1)(A). Texas Workers' Compensation Commission Appeal No. 030663-s, decided May 1, 2003. Due to our affirmance of the hearing officer's waiver determination, we likewise affirm his determinations that the claimant sustained a compensable injury and had disability from \_\_\_\_\_, through the date of the hearing.

The decision and order of the hearing officer is affirmed.

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.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge