

APPEAL NO. 030867
FILED MAY 29, 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 March 10, 2003. With respect to the issues before him, the hearing officer determined that the respondent/cross-appellant (claimant beneficiary) did not prove the causal connection between the decedent's legionella pneumophila and her employment with the appellant/cross-respondent (self-insured); and that the self-insured waived its right to contest compensability of the claimed occupational disease pursuant to Section 409.021, thus, the occupational disease injury that led to the decedent's death became compensable as a matter of law. In its appeal, the self-insured contends that the hearing officer erred in retroactively applying Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002) and, thus, in determining that it waived its right to contest compensability pursuant to Section 409.021. In his response to the self-insured's appeal, the claimant beneficiary urges affirmance of the waiver issue. In his cross-appeal, the claimant beneficiary argues that the hearing officer's determination that the decedent did not sustain an occupational disease injury in the course and scope of her employment is against the great weight of the evidence. In its response to the cross-appeal, the self-insured urges affirmance.

DECISION

Affirmed.

The decedent died on _____, as a result of adult respiratory distress syndrome caused by legionella pneumonia. The claimant beneficiary, the decedent's husband, claimed that she contracted the legionella bacteria at work as a clerk typist for the self-insured. The self-insured does not dispute that it received written notice of the claimed occupational disease injury on _____, and filed its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) contesting compensability with the Texas Workers' Compensation Commission on October 5, 2000.

The resolution of the waiver issue is determinative of the other issue presented here. The self-insured argues that the hearing officer erred in retroactively applying the Texas Supreme Court's decision in Downs. We have previously considered and rejected that argument. See Texas Workers' Compensation Commission Appeal No. 022582, decided November 25, 2002; Texas Workers' Compensation Commission Appeal No. 023123, decided January 16, 2003; Texas Workers' Compensation Commission Appeal No. 030473, decided April 15, 2003; and Texas Workers' Compensation Commission Appeal No. 030712, decided April 30, 2003. Thus, we find no merit in the assertion that the hearing officer erred in applying Downs in this case and in determining that the self-insured waived its right to contest compensability of the claimed occupational disease injury pursuant to Section 409.021 by failing to file its

contest within seven days of the date it received its first written notice of the claimed injury.

Due to our affirmance of the hearing officer's waiver determination, we likewise affirm his determination that the decedent sustained a compensable occupational disease injury because the injury became compensable as a matter of law. The claimant beneficiary filed an appeal of the hearing officer's determination that the decedent did not sustain an occupational disease injury in the course and scope of her employment. However, because we have affirmed the determination that the injury became compensable as a matter of law, the claimant beneficiary is not aggrieved by that determination. Accordingly, we will not further address the issue because even if we were to find that the hearing officer erred in making the challenged determination, that determination would not affect the outcome of the case. See Texas Workers' Compensation Commission Appeal No. 011170, decided July 9, 2001.

The hearing officer's decision and order are affirmed.

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

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

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge