APPEAL NO. 031363
FILED JULY 11, 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 April 22, 2003. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury, with the date of injury of _____; that the respondent (self-insured) did not waive its right to contest compensability pursuant to Section 409.021 and Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002); and that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under a group health insurance policy. In her appeal, the claimant asserts error in the hearing officer's determinations that the self-insured did not waive its right to contest compensability in this instance and that she did not sustain a compensable repetitive trauma injury. In its response to the claimant's appeal, the self-insured urges affirmance. The self-insured did not appeal the hearing officer's determinations that the claimant not make an election of remedies under her group heath insurance policy and that determination has, therefore, become final. Section 410.169.

DECISION

Affirmed.

WAIVER

The hearing officer did not err in her determination that the self-insured did not waive the right to contest compensability of the claim. The claimant alleged an injury on _____, and testified that she notified her employer on that same day. It is undisputed that the self-insured had written notice of the claim on January 14, 2003. The self-insured filed a "cert 21" that was received by the Texas Workers' Compensation Commission (Commission) on January 17, 2003, stating that, "If any benefits are due they will be paid when they accrue" and also reserving the right of the self-insured to further investigate the claim. On January 22, 2003, eight days after the self-insured's initial written notice of the claim, the Commission received the self-insured's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), disputing the claim.

In Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003, we focused on language in the Supreme Court's decision in Downs, *supra*, and determined that the carrier is required to take some action within seven days of receiving written notice of the injury in order to be entitled to the 60-day period to investigate a claim and deny compensability. In the present case, because the self-insured filed the "cert 21," there is evidence indicating that the self-insured took action within seven days after receiving written notice of the claimed injury. Accordingly, we perceive no error in the hearing officer's determinations that the self-insured did not waive the right to contest compensability of the claimed injury.

The claimant argues that even though the self-insured filed the "cert 21" with the Commission on January 17, 2003, the self-insured did not timely contest because the claimant gave written notice of her injury to her employer on _____. The claimant asserts that because the employer is self-insured, written notice to the employer was also notice to the self-insured. However, the claimant's argument is without merit. The parties stipulated that the claimant worked for a state agency. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 109.1 (Rule 109.1) provides that "a state agency shall act in the capacity of the employer" and that "the State Office of Risk Management (SORM) shall act in the capacity of insurance carrier." Consequently, written notice had to be given to SORM to initiate the seven days as enunciated by the Supreme Court in Downs, *supra*, not to the state agency for which the claimant worked. The claimant also essentially contends that that rule is a violation of the equal protection clause of the Constitution. We are without the authority to consider such a challenge to a Commission rule. *See* Texas Workers' Compensation Commission Appeal No. 030137, decided February 20, 2003; Texas Workers' Compensation Commission Appeal No. 022186, decided October 4, 2002.

INJURY

The claimant takes exception to the hearing officer's conclusion that the claimant's carpel tunnel syndrome (CTS) was not related to the claimant's employment in light of the opinions from her treating doctor that it was caused by her employment. However, the hearing officer points out in her findings that her decision is premised on the fact that the treating doctor's records do not reflect that he had knowledge of the details of the claimant's work and further that the claimant failed to prove with "specificity, the amount of repetitive motion…required by her employment." The hearing officer was acting within her province as the fact finder in so finding. She simply was not persuaded that the claimant sustained her burden of proving the causal connection between her employment and her CTS. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's injury determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier 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 WEST 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.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Edward Vilano
Appeals Judge