

APPEAL NO. 031381
FILED JULY 16, 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 29, 2003. With respect to the issues before her, the hearing officer determined that the respondent (claimant) did not sustain an occupational disease in the course and scope of her employment; that the appellant (carrier) waived its right to contest compensability pursuant to Sections 409.021 and 409.022 and, thus, that the claimant's injury became compensable as a matter of law; and that the claimant had disability from June 11, 2002, through the date of the hearing. In its appeal, the carrier contends that the hearing officer erred in determining that the claimant sustained a compensable injury and had disability. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The bulk of the carrier's appeal appears to be premised on a misapprehension that the hearing officer determined that the claimant sustained a repetitive trauma injury in the course and scope of her employment in that the carrier's primary argument is that the claimant did not establish that her employment activities were sufficiently repetitive and traumatic to have caused the bilateral carpal tunnel syndrome (CTS). However, as noted above, the hearing officer found for the carrier on the course and scope issue and more specifically, determined that the claimant did not establish the causal connection between her employment and the bilateral CTS. The hearing officer determined that the claimant sustained a compensable injury as a matter of law due to the carrier's failure to timely contest compensability in accordance with Section 409.021 as it was interpreted by the Supreme Court in Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002).

The carrier does not dispute that it received written notice of the claimed 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 July 8, 2002. In Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003, we focused on language in the Texas Supreme Court's decision in Downs, 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. It cannot simply sit back and rely on the fact that benefits did not accrue prior to the date it filed its dispute to argue that it did not waive its right to contest compensability. In this instance, there is no evidence in the record that the carrier "took some action" within the seven-day period following its receipt of written notice of the claimed injury indicating that it had accepted the claim or intended to pay benefits; thus, the hearing officer did not err in determining that the carrier waived its right to dispute compensability of the claimed injury.

Due to our affirmance of the hearing officer's waiver determination, we likewise affirm her determination that the claimant sustained a compensable injury because the injury became compensable as a matter of law due to the carrier's waiver of its right to dispute compensability. In addition, nothing in our review of the record indicates that the hearing officer's determination that the claimant had disability from June 11, 2002, through the date of the hearing as a result of the claimed injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **UNIVERSAL UNDERWRITERS GROUP** and the name and address of its registered agent for service of process is

**DON JOHNSON
101 EAST PARK, SUITE 200
DALLAS, TEXAS 75074.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge