

APPEAL NO. 031458
FILED JULY 23, 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 (CCH) was held on May 12, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease injury with a date of injury of _____; that the claimed injury does not include an injury to the claimant's hands, wrists, shoulders, and cervical area; that the claimant did not have disability; and that the respondent (carrier) did not waive the right to contest compensability of the claimed injury by not timely contesting it in accordance with Section 409.021. The claimant appeals these determinations. The carrier urges affirmance of the hearing officer's decision.

DECISION

Reversed and remanded.

With regard to the waiver issue, the evidence reflects that the carrier first received written notice of the claimed injury on August 5, 2002. The insurance carrier adjuster testified that the carrier initially attempted to electronically file a Payment of Compensation Form (cert-21) indicating its intention to pay benefits arising from the claimed injury as they accrued, but that the transmission was unsuccessful. According to the adjuster, the carrier thereafter electronically filed a Notice of Refused/Disputed Claim (TWCC-21) on August 7, 2002, and additionally mailed a copy to the claimant. The adjuster testified that the carrier received no indication that the Texas Workers' Compensation Commission (Commission) did not receive the electronically filed TWCC-21. A copy of the carrier's computer record purporting to show that the TWCC-21 was electronically filed on August 7, 2002, was admitted into evidence. Other than this record and the adjuster's testimony, there is no indication that the Commission received the TWCC-21. The evidence additionally reflects that the carrier electronically filed another TWCC-21 on September 13, 2002, disputing the extent of the claimed injury. At the hearing, the carrier requested that the hearing officer take official notice of the September 13 filing, however, the hearing officer declined to do so on the grounds that it would be improper. The hearing officer was persuaded by the adjuster's testimony that the carrier timely disputed the claimed injury via the August 7, 2002, electronic filing and determined that the carrier did not waive the right to contest compensability of the claimed injury.

Section 409.021(a) requires that a carrier act to initiate benefits or to dispute compensability within seven days of first receiving written notice of an injury or waive its right to dispute compensability. See Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002); Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. Our established precedent is that testimony from an adjuster regarding the timely filing of a document with the Commission is indeed

evidence that the hearing officer may consider in determining whether a document was timely filed with the Commission. Texas Workers' Compensation Commission Appeal No. 992910, decided February 3, 2000. For this reason, we perceive no error in the hearing officer's reliance on the adjuster's testimony in resolving the waiver issue. However, in analogous cases, we have required that a hearing officer take official notice of essential Commission records where compliance with the 1989 Act is at issue. See Texas Workers' Compensation Commission Appeal No. 941171, decided October 17, 1994; Texas Workers' Compensation Commission Appeal No. 002287, decided November 13, 2000; Texas Workers' Compensation Commission Appeal No. 010696, decided April 26, 2001; and Texas Workers' Compensation Commission Appeal No. 012101-s, decided October 22, 2001. In Appeal No. 941171, we held that where timeliness or sufficiency of the TWCC-21 was in issue, the hearing officer should take official notice of that form and the date it was filed, if necessary, to ensure full development of the facts in accordance with Section 410.163(b). For these reasons, we find it necessary to remand this case for the hearing officer to take official notice of the Commission's records documenting the date of the TWCC-21 filing in question. Should the hearing officer find that the Commissions' records conflict with the adjuster's testimony, he should then determine and clarify whether, given the evidence as a whole, such conflict is to be resolved in favor of the carrier or the claimant. Because the resolution of the other disputed issues in this case is dependent upon the resolution of the waiver issue, the remaining disputed issues are additionally remanded to the hearing officer.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

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

**WILLIAM PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge