

APPEAL NO. 031736
FILED AUGUST 13, 2003

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 030768-s, decided May 8, 2003, to have the hearing officer resolve the question of whether and when the appellant (claimant) received a copy of the October 25, 2002, Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) contesting compensability, which question also would resolve the issue of whether the respondent (carrier) waived its right to contest compensability of the injury pursuant to Section 409.021. On remand, the hearing officer did not hold a hearing; rather, he relied on the record developed at the February 26, 2003, hearing. The hearing officer determined that the claimant received a copy of the October 25, 2002, TWCC-21, which contested compensability, on October 28, 2002, and, thus, the carrier did not waive its right to contest compensability. In his appeal, the claimant argues that "no evidence" or "grossly insufficient" evidence supports the hearing officer's determination that the carrier sent a copy of the October 25, 2002, TWCC-21 to the claimant, which the claimant received on October 28, 2002. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the carrier sent a copy of the TWCC-21 contesting compensability to the claimant on October 25, 2002, and that the claimant received the TWCC-21 on October 28, 2002. On the October 25, 2002, TWCC-21, the box is checked indicating that a copy of the document was sent to the claimant. That document contains the claimant's correct name and address. From that evidence, the hearing officer could and did find that the carrier mailed a copy of the TWCC-21 to the claimant on October 25, 2002. Having determined that the carrier mailed a copy of the TWCC-21 to the claimant on the same day it mailed its TWCC-21 to the Texas Workers' Compensation Commission (Commission), in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.4(l) (Rule 102.4(l)), the hearing officer could presume that the claimant received that document on the same day the Commission received its copy, October 28, 2002. It is undisputed that the carrier received its first written notice of the injury on October 18, 2002; thus, the hearing officer properly determined that the carrier did not waive its right to contest compensability in this instance because he determined that the claimant received the required notice of the contest of compensability well within 60 days of October 18, 2002. The claimant cites Texas Workers' Compensation Commission Appeal No. 023262, decided February 19, 2003, and contends that it necessitates reversal of the hearing officer's decision in this case. We find no merit in that assertion. In that case, we reversed the hearing officer's determination that the carrier did not waive its right to contest compensability and rendered a new decision that the carrier had waived its right to contest because the evidence did not support the hearing officer's finding that the claimant timely received a

copy of the TWCC-21 contesting compensability. In Appeal No. 023262, the TWCC-21 contained an incorrect address for the claimant. Accordingly, we determined that the evidence simply did not support a finding that the contest of compensability had been mailed to and received by the claimant as is required in Section 409.021. There is no such problem here. Rather, as we noted above, the TWCC-21 contains the correct address for the claimant and indicates that a copy was sent to him. Thus, we cannot agree that there is insufficient evidence to support the determination that the TWCC-21 was mailed to and received by the claimant within 60 days of the date the carrier received its first written notice of the injury. Accordingly, we affirm the hearing officer's determination that the carrier did not waive its right to contest compensability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **COMMERCE & INDUSTRY INSURANCE 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.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge