

APPEAL NO. 031807
FILED AUGUST 18, 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 June 6, 2003. The hearing officer determined that: (1) the respondent (carrier) is relieved from liability, pursuant to Section 409.004, for an injury on _____, because the appellant (claimant) failed to timely file an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) with the Texas Workers' Compensation Commission (Commission) within one year of the injury as required by Section 409.003; (2) because the carrier is relieved from liability under Section 409.004, the claimant did not sustain a compensable injury on _____; (3) the claimant did not have disability; and (4) the carrier is not relieved from liability under Section 409.002, because the claimant timely notified his employer of an injury as required by Section 409.001. The claimant appeals the hearing officer's determinations regarding whether he timely filed a TWCC-41 and sustained a compensable injury, on sufficiency of the evidence grounds. The carrier urges affirmance. The hearing officer's disability and notice determinations were not appealed and have become final. Section 410.169.

DECISION

Affirmed.

FAILURE TO TIMELY FILE A CLAIM FOR COMPENSATION

The hearing officer did not err in determining that the carrier is relieved from liability for an injury on _____, because the claimant failed to timely file a claim for compensation not later than one year after the date on which the injury occurred, pursuant to Section 409.003. The claimant asserts that the hearing officer erred in determining that the time for filing a TWCC-41 was not tolled, pursuant to Section 409.008. Section 409.008, provides:

FAILURE TO FILE EMPLOYER REPORT OF INJURY; LIMITATIONS TOLLED. If an employer or the employer's insurance carrier has been given notice or has knowledge of an injury to or the death of an employee and the employer or insurance carrier fails, neglects, or refuses to file the report under Section 409.005, the period for filing a claim for compensation under Sections 409.003 and 409.007 does not begin to run against the claim of an injured employee or legal beneficiary until the day on which the report required under Section 409.005 has been furnished.

The tolling provision does not apply unless there is first the duty to file an Employer's First Report of Injury or Illness (TWCC-1). Texas Workers' Compensation Commission

Appeal No. 000444, decided April 13, 2000; Texas Workers' Compensation Commission Appeal No. 022395, decided October 16, 2002. Section 409.005(a)(1), effective for dates of injury on or after September 1, 1995, provides that an employer shall report an injury if it results in the absence of an employee from work for more than one day. It is undisputed that the claimant's injury on _____, did not result in absence from work for more than one day. Therefore, a TWCC-1 was not required to be filed under Section 409.005, and the hearing officer did not err in determining that the time for filing a TWCC-41 was not tolled under Section 409.008. Id.

The claimant also asserts that the hearing officer erred in determining that good cause did not exist for failure to timely file a TWCC-41. Section 409.004 provides, in pertinent part, that failure to file a claim for compensation with the Commission as required under Section 409.003 relieves the employer and the employer's insurance carrier of liability under the 1989 Act unless good cause exists for failure to file a claim in a timely manner. Whether good cause exists is a matter left up to the discretion of the hearing officer, and the determination will not be set aside unless the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 002816, decided January 17, 2001, citing Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We have held that the appropriate test for the existence of good cause is whether the claimant acted as a reasonably prudent person would have acted under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994. In view of the evidence presented, we cannot conclude that the hearing officer abused his discretion in determining that the claimant did not have good cause for failing to timely file a TWCC-41 with the Commission.

NON-COMPENSABLE INJURY

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The claimant's challenge of the hearing officer's injury determination is dependent upon the success of his argument with regard to the timely filing issue. Although the hearing officer found that the claimant sustained an injury in the course and scope of his employment on _____, the hearing officer properly concluded that such injury was not compensable because the claimant failed to timely file a claim for compensation without good cause. Section 409.004.

The claimant makes repeated references, in his appeal, to a date of injury of (alleged date of injury), and at one point states, "I will go with the [(alleged date of injury)], date since it is covered." We note that the claimant asserted an _____, date of injury. When asked to comment about the date of injury of (alleged date of injury), the claimant stated "That's not valid." Accordingly, we decline to consider whether the claimant sustained a compensable injury on (alleged date of injury).

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION** for **Reliance National Indemnity, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Edward Vilano
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge