APPEAL NO. 031991
FILED SEPTEMBER 17, 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 June 26, 2003. The hearing officer determined that the appellant (self-insured) waived the right to contest compensability of the claimed injury by not timely contesting compensability in accordance to Sections 409.021 and 409.022; that although the respondent (claimant) had not sustained an injury in the course and scope of employment "in the form of left shoulder impingement syndrome/contusion and left shoulder tendonitis and bursitis" the injury is compensable because the self-insured waived the right to contest compensability; and that the claimant had disability from November 9, 2001, through the date of the CCH.

The self-insured appeals, principally arguing that the hearing officer found that "the claimant did not sustain an injury" and therefore the decision in Continental Casualty Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.) applies and that there is "no evidence that the self-insured did not submit its [Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21)] until November 26, 2002." The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant, a jail attendant, testified that her left shoulder was injured when her supervisor repeatedly and forcefully poked her in the left shoulder on _____. The parties stipulated that the self-insured received the first written notice of the injury on November 14, 2001. The hearing officer determined (Finding of Fact No. 6) that the self-insured "filed a [TWCC-21] disputing the claimed injury on November 26, 2002 [sic 2001]." The self-insured's appeal contends that there is "no evidence that the self-insured did not submit its TWCC-21 until November 26, 2002 [sic 2001]." The claimant argued in her opening statement that the self-insured's TWCC-21 was not filed until November 26, 2001, and that argument is supported by a letter from the claimant's attorney to the self-insured stating that "the [Commission] has no record of a dispute being filed until November 26, 2001." The Appeals Panel has generally held that once a claimant has satisfied the burden of proving the date the carrier received written notice of the claimed injury (in this case stipulated) the carrier then has the burden of proving the date it disputed the compensability of the claimed injury. Texas Workers' Compensation Commission Appeal No. 960974, decided July 8, 1996; Texas Workers' Compensation Commission Appeal No. 021972, decided September 23, 2002. The self-insured, in this case, failed to do so and there is some evidence to support the November 26, 2001, TWCC-21 file date.

The self-insured's principal argument is that the hearing officer, in Finding of Fact No. 2, states that the claimant did not sustain an injury and therefore Williamson applies. Actually what the hearing officer found was that the claimant "did not sustain damage or harm to the physical structure of her body [an injury] in the form of left shoulder impingement syndrome/contusion and left shoulder tendonitis and bursitis **while in the course and scope of her employment.**" (Emphasis added.) Therefore the hearing officer impliedly has found an injury, identifies the injury, and finds it was not incurred in the course and scope of the claimant's employment. The Appeals Panel has previously recognized that Williamson is limited to situations where there is a determination that the claimant did not have an injury, that is, no damage or harm to the physical structure of the body, as opposed to cases where there is an injury which was determined by the hearing officer not to be causally related to the claimant's employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002. In this case the hearing officer has identified injuries, which are supported by medical evidence that the claimant may have. The self-insured argues that those conditions are ordinary diseases of life. We hold that Williamson does not apply because the hearing officer found an injury to exist but only found it was not in the course and scope of employment.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not incorrect as a matter of law and not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

CITY SECRETARY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Margaret L. Turner
Appeals Judge