

APPEAL NO. 032421
FILED NOVEMBER 6, 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 opened on May 19, 2003, with the record closing on August 6, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable repetitive trauma injury in the form of bilateral carpal tunnel syndrome (CTS) with a date of injury of _____; that the appellant (self-insured) waived its right to contest the compensability of the claimant's _____, injury under Section 409.021; that the claimant failed to timely report her injury to the self-insured without good cause, but the self-insured is not relieved of liability under Section 409.002 because it waived its right to contest the compensability of the injury; that the claimant had disability due to her compensable injury only from August 21, 2002, to April 29, 2003; and that the claimant did not have disability due to her compensable injury from _____, to August 20, 2002, or from April 30, 2003, to the present. The self-insured appeals the hearing officer's determinations regarding the compensability of the injury, disability, and waiver. No response was received from the claimant. There is no appeal of the hearing officer's determinations on the issues of the date of injury or timely notice of injury.

DECISION

Affirmed.

Conflicting evidence was presented on the issue of whether the claimant sustained a repetitive trauma injury as defined by Section 401.011(36). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's determination that the claimant sustained a repetitive trauma injury in the form of bilateral CTS while in the course and scope of her employment is supported by the claimant's testimony and the medical reports. In addition, the hearing officer's determination that the claimant had disability as defined by Section 401.011(16) from August 21, 2002, through April 29, 2003, is supported by the claimant's testimony and the medical reports. We conclude that the hearing officer's determinations that the claimant sustained a repetitive trauma injury in the form of bilateral CTS and that she had disability from August 21, 2002, to April 29, 2003, are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

With regard to the waiver issue, the hearing officer determined that the self-insured waived its right to contest the compensability of the claimant's injury under Section 409.021. See Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), wherein the Texas Supreme Court determined that under Sections 409.021 and

409.022, a carrier that fails to begin benefit payments as required by the 1989 Act or send a notice of refusal to pay within seven days after it receives written notice of injury has not met the statutory requisite to later contest compensability. The self-insured is an insurance carrier for workers' compensation purposes pursuant to Section 401.011(27)(D). The self-insured contends that it made a typographical error in reporting on its first Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) that it first received written notice of injury on September 19, 2002, and that it actually first received written notice of injury on September 25, 2002, as reported on a subsequent TWCC-21. The parties stipulated that the first TWCC-21, which disputed compensability and is dated September 27, 2002, was filed with the Texas Workers' Compensation Commission on September 27, 2002. The hearing officer resolved the conflicts in the evidence by determining that the self-insured first received written notice of the injury on September 19, 2002, as was initially reported by the self-insured, and determined that the self-insured waived its right to contest compensability of the injury because it did not contest compensability within seven days of its first receipt of written notice of the injury. There is no assertion or evidence that the self-insured agreed to initiate benefits, or that it initiated benefits, within seven days of September 19, 2002. We conclude that the hearing officer's determination on the waiver issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

Although it is undisputed on appeal that the claimant did not timely notify the self-insured of her injury under Section 409.001, and did not have good cause for failing to provide timely notice, the hearing officer did not err in determining that the self-insured is not relieved of liability under Section 409.002 because the Appeals Panel has held that when a carrier loses its right to contest compensability by not complying with the requirements of Section 409.021(a), it loses its right to assert a defense under Section 409.002 based upon the claimant's failure to give timely notice of injury to the employer. Texas Workers' Compensation Commission Appeal No. 022027-s, decided September 30, 2002.

We do not find Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.), which is cited by the self-insured, to be applicable to the facts of this case. See Texas Workers' Compensation Commission Appeal No. 022608, decided November 25, 2002.

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

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

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge