

APPEAL NO. 032721  
FILED DECEMBER 2, 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 July 31, 2003. The hearing officer determined that the appellant (carrier) waived the right to contest the compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021; that since the carrier waived the right to contest the compensability of the claimed injury, as a matter of law, the claimant did sustain a compensable injury on \_\_\_\_\_; that the claimant did sustain disability secondary to the compensable injury from March 12, 2002, through the date of the hearing; and that since the carrier waived the right to contest the compensability of the claimed injury, the carrier is not relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001. The carrier appeals, essentially arguing that because the claimant did not have an injury, there can be no waiver, and asserting that Section 409.021 has been changed to eliminate the seven-day waiver provision. The file does not contain a response from the claimant.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

On appeal, the carrier asserts that because the claimant did not have an injury, none can be created through waiver. In Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.), the court held that "if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law." 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. When a carrier waives its right to contest compensability of the injury, the injury becomes compensable as a matter of law, provided that there is physical harm or damage to the body, and the carrier is liable for workers' compensation benefits. Texas Workers' Compensation Commission Appeal No. 023017, decided January 27, 2003.

The hearing officer specifically found that the claimant did sustain harm and damage to his low back. This finding is supported by sufficient evidence. However, the hearing officer also specifically found that the "claimant did not sustain harm or damage to his low back while performing duties within the course [and] scope of his employment on \_\_\_\_\_." The carrier appears to argue that this finding raises an application

of Williamson, and that any injuries which the claimant may have preexisted \_\_\_\_\_ . In Texas Workers' Compensation Appeal No. 000604, decided May 10, 2000, the Appeals Panel stated:

We have interpreted Williamson to mean that a carrier's failure to timely dispute does not create an injury only when there is no injury. If the claimant has established a condition that meets the definition of injury under Section 401.011(26), it does not matter that the cause of the injury may be outside the course and scope of employment because causation is no longer in dispute when a [Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21)] has not been timely and properly filed.

This case is distinguishable from Williamson, because in the instant case the hearing officer's Finding of Fact No. 4 specifically states that he found that the "claimant sustained harm and damage to his low back." The hearing officer's finding that no damage or harm was sustained on \_\_\_\_\_, does not necessitate reversal of the conclusion that the carrier waived the right to contest compensability of the claimed injury. We do not read Williamson to require proof of damage or harm on the specific date alleged.

The carrier next contends that the seven-day "pay or dispute" provision contained in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), should not apply to the facts of this case because Texas House Bill 2199 (HB 2199), which amends Section 409.021, effective September 1, 2003, should be applied retroactively. We have previously considered and rejected this argument in Texas Workers' Compensation Commission Appeal No. 031781, decided August 26, 2003. Since the carrier did not agree to initiate benefits or dispute compensability within seven days after it received written notice of injury, the hearing officer did not err in determining that the carrier waived the right to contest compensability and that the claimant's injury is compensable as a matter of law. See Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **HARTFORD INSURANCE COMPANY OF THE MIDWEST** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Margaret L. Turner  
Appeals Judge