

APPEAL NO. 033143  
FILED JANUARY 26, 2004

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 November 17, 2003. The hearing officer determined that the respondent (carrier) did not waive the right to contest compensability of the claimed injury in accordance with Sections 409.021 and 409.022, and that the appellant's (claimant) \_\_\_\_\_, compensable injury does not extend to include disc bulges at L4-5 and L5-S1. The claimant appeals these determinations. The carrier urges affirmance of the hearing officer's decision.

DECISION

Reversed and rendered.

The evidence reflects that the claimant sustained an injury at work on \_\_\_\_\_. The claimant sought medical treatment shortly thereafter and an MRI was performed on December 19, 2000, which revealed disc bulges at the aforementioned lumbar levels. Although the carrier offered no evidence to substantiate its claim that it accepted only a compensable lumbar sprain, the claimant offered into evidence a copy of a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), which is dated January 23, 2001, and reflects that the carrier first received written notice of a "back" injury on December 11, 2000, and that the carrier intended to pay benefits as they accrued, with a date of payment listed as January 18, 2001. There is no indication that benefits of any kind were paid prior to the submission of the TWCC-21 or that an earlier TWCC-21 existed. The evidence reflects that the claimant continued receiving medical treatment to her back and another MRI was performed in September 2002, which revealed a worsening of the condition of the discs at L4-5 and L5-S1. In December 2002 the claimant underwent epidural steroid injections and in March 2003 a decompression at L5-S1.

In a TWCC-21 dated March 18, 2003, the carrier disputed the claim, listing the nature of the injury as "back strain" and disputing "any further benefits as related to the back as this is no longer compensable on the 11-28-00 [workers' compensation] claim." A correction to that form was made via a TWCC-21 dated April 9, 2003, wherein the carrier lists the nature of the injury as "back/strain sprain" and lists as the reason for the dispute: "compensable body parts: lumbar strain/sprain [right] shoulder."<sup>1</sup>

The claimant argued at the hearing that the carrier waived the right to dispute the compensability of a back injury by taking no action within seven days after first receiving written notice of the injury. We agree. Finding of Fact No. 7 reflects that the "carrier accepted liability for a lumbar sprain and initiated benefits." However, we would point

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<sup>1</sup> Apparently the claimant's right shoulder was initially disputed as being part of the compensable injury, but was later accepted by the carrier as compensable. The right shoulder was not in issue at the hearing.

out that there is no evidence to support the contention that the carrier accepted only a sprain and, in fact, the TWCC-21 dated January 23, 2001, indicates that the injury is generally the claimant's "back." Furthermore, it is not sufficient that the carrier initiated benefits as they accrued, as Section 409.021(a) requires that the carrier act to initiate benefits or dispute compensability within seven days of first receiving written notice of an injury or waive its right to dispute compensability. See Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002); Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. We stated in Appeal No. 030380-s that "to comply with the Supreme Court's holding in Downs, the carrier has the burden to prove that it 'took some action within seven days,' and to present evidence indicating the action taken." In Texas Workers' Compensation Commission Appeal No. 030663-s, decided May 1, 2003, the Appeals Panel, relying on Appeal No. 030380-s, noted that a carrier cannot simply sit back and rely on the fact that benefits did not accrue prior to the date it filed its dispute and argue that it did not waive its right to contest compensability. In the instant case, there is no evidence that within seven days of receiving written notice of the injury, the carrier took any action indicating that it had accepted the claim and intended to pay benefits as they accrued. For these reasons, the hearing officer erred in determining that the carrier did not waive its right to contest compensability of the back injury.

Although Rule 124.3(c) provides that a carrier does not waive the right to dispute the extent of a compensable injury, in the present case, disputing the disc bulges in terms of an extent-of-injury issue is rather disingenuous given that the TWCC-21 dated January 23, 2001, reflects that the carrier had written notice of a back injury on December 11, 2000, and that an MRI performed on December 19, 2000, revealed the bulges. We have stated that Rule 124.3(c) cannot be interpreted in a way that would allow a dilatory carrier to recast the primary claimed injury issue as an "extent issue" and thereby avoid the mandates of Section 409.021. See Texas Workers' Compensation Commission Appeal No. 022454, decided November 18, 2002; Texas Workers' Compensation Commission Appeal No. 021907, decided September 16, 2002; Texas Workers' Compensation Commission Appeal No. 021569, decided August 12, 2002; and Texas Workers' Compensation Commission Appeal No. 022183, decided October 9, 2002. As it is clear from the evidence that the primary claimed injury was the "back" and not simply limited to a lumbar sprain/strain, the carrier was obligated to dispute the compensability of the claimed injury in accordance with Section 409.021. Because the carrier waived the right to contest compensability of the injury, the claimant's primary claimed injury to her back, including the bulges at L4-5 and L5-S1, became compensable as a matter of law.

The hearing officer's decision is reversed and a new decision rendered that the carrier waived the right to contest compensability of the claimed injury and, consequently, the claimant's back injury, which includes disc bulges at L4-L5 and L5-S1, became compensable as a matter of law.

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

**DENISE BLOCKBURN  
12225 GREENVILLE AVENUE  
DALLAS, TEXAS 75243.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge