

APPEAL NO. 033199
FILED FEBRUARY 2, 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 October 30, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (herein referred to as claimant) sustained a compensable injury on _____; that the compensable injury includes an injury to the neck regarding C5-6 and C6-7 and osteophytes associated with these levels; and that the appellant self-insured (herein referred to as carrier) waived the right to contest compensability of the claimed injury by not timely contesting in accordance with Sections 409.021 and 409.022. The carrier appealed, disputing the extent-of-injury and carrier waiver determinations. The claimant responded, urging affirmance. The compensable injury determination has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant, a psychiatric nurse, testified that he was struck by a patient on _____, while performing his job duties for the employer. The carrier did not dispute that the incident occurred. In its appeal, the carrier contends that it "stipulated compensability repeatedly throughout this process." Section 410.166 provides that a written stipulation or agreement of the parties that is filed in the record or an oral stipulation or agreement of the parties that is preserved in the record is final and binding. A review of the record reveals that the parties did not reach an agreement on the issue of compensability leaving the issues of compensable injury, carrier waiver, and extent of injury as issues to be decided by the hearing officer.

The determination that the claimant sustained a compensable injury was not appealed and has become final. Section 409.021 provides, in pertinent part, that for injuries occurring prior to September 1, 2003, an insurance carrier shall, not later than the seventh day after the receipt of written notice of an injury, begin the payment of benefits as required by the 1989 Act or notify the Texas Workers' Compensation Commission and the employee in writing of its refusal to pay benefits. In Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), the Supreme Court held that the failure of a carrier to comply with the pay or dispute provision resulted in the carrier waiving its right to contest compensability. A notice of injury, for the purposes of starting the time period for contesting compensability, must be written and must fairly inform the carrier of the name of the injured employee, the identity of the employer, the approximate date of injury, and information which asserts that the injury is work related. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1(a) (Rule 124.1(a)). The evidence reflects that the carrier first received written notice of the injury on October 14, 2002. As noted by the hearing officer, no evidence was presented that the carrier paid or contested compensability of the claimed injury within seven days. Because there was

no indication that the carrier either took action to initiate benefits or disputed the claim within seven days of October 14, 2002, we cannot agree that the hearing officer erred in concluding that the carrier waived the right to contest compensability of the claimed injury.

Regarding the extent-of-injury determination, the carrier argues that the hearing officer erred in determining that it waived its right to contest the extent determination and additionally argues that the extent determination is contrary to the great weight of the evidence. The claimant contends that the carrier is not allowed to convert the primary injury into an individual aspect for purposes of circumventing the requirements of Section 409.021. The claimant also maintains that there is sufficient evidence to support the extent determination.

Rule 124.3(c) provides that Section 409.021, regarding the initiation of benefits and carrier waiver, does not apply to “extent of injury” disputes. Notwithstanding, we have said that that rule 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 _____.

It is clear from this case that the primary claimed injury included the right shoulder, neck, and low back. As such, the carrier was obligated to dispute the compensability of the claimed shoulder, neck, and back protrusion injuries in accordance with Section 409.021. The carrier failed to do this. Since the carrier waived the right to contest compensability of the injury, the claimant’s primary claimed injury to his right shoulder, neck, and back became compensable as a matter of law. Texas Workers’ Compensation Commission Appeal No. 030831, decided May 22, 2003; Texas Workers’ Compensation Commission Appeal No. 023101, decided January 30, 2003; and Appeal No. 022183, *supra*. The hearing officer additionally made clear that she was persuaded, based on the evidence presented, that the work-related injury extends to and includes an aggravation of the cervical area at C5-6 and C6-7 and osteophytes associated with these levels. There is sufficient evidence to support this determination.

We affirm the decision and order of the hearing officer.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge