

APPEAL NO. 033210
FILED JANUARY 13, 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 (CCH) was held on November 10, 2003. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable injury in the form of an occupational disease with a date of injury of _____, due to the appellant/cross-respondent (self-insured) waiving its right to dispute the compensability of the claim; that the claimant had disability resulting from an injury sustained on _____, from June 4 through July 29, 2003; and that the self-insured waived the right to dispute compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021 and 409.022. The self-insured appealed, arguing that the hearing officer's injury, disability, and carrier waiver determinations are against the great weight and preponderance of the evidence. The claimant cross-appealed, arguing that the hearing officer's determination that on _____, the claimant did not sustain damage or harm to her person in the form of occupational exposure while in the course and scope of her employment with the employer was error based on sufficiency of the evidence grounds. The appeal file does not contain a response to the appeals from either party.

DECISION

Reversed and rendered.

The hearing officer erred in determining that the carrier waived its right to dispute compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021 and 409.022. In Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003, citing Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002), we interpreted Section 409.021 to require that a carrier take some action within seven days of receiving written notice of an injury and indicated that this could include the submission of a "cert-21." See also Texas Workers' Compensation Commission Appeal No. 022375-s, decided October 31, 2002 (holding that the carrier did not waive compensability, when the carrier filed a "cert-21" within seven days of receipt of written notice, benefits accrued but were not paid by the carrier, and the carrier subsequently disputed the claimed injury within 60 days).

This case turns on whether the self-insured took some action within seven days of receiving written notice of the claimed injury. Claimant's Exhibit No. 12, a Medical Visit Report dated May 22, 2003, supports the hearing officer's determination that the self-insured first received written notice of an injury on May 22, 2003. Claimant's Exhibit No. 3 and Carrier's Exhibit No. 21-2 reflect the self-insured's electronic filing of a "cert-21" and an acknowledgement of receipt on May 28, 2003, by the Texas Workers' Compensation Commission (Commission). We note that the carrier's "cert-21" was submitted to the Commission in accordance with procedures established by Advisory

2002-15, dated September 12, 2002, whereby the Commission will “provide an acknowledgement of an insurance carrier’s agreement to pay benefits as they accrue and are due.” The self-insured thus fulfilled its obligation to “pay or dispute” the claim as required by Section 409.021. Under the circumstances presented in this case, the hearing officer erred in finding that the self-insured filed its “cert-21” disputing the claimed injury on June 5, 2003. The evidence reflects that the self-insured agreed to pay benefits by filing its “cert-21” on May 28, 2003, and that it contested compensability of the claimed injury on June 5, 2003, within 60 days after the self-insured first received written notice of the claimed injury. The hearing officer did not comment on the “cert-21” that was filed on May 28, 2003. The evidence admitted at the CCH clearly establishes that the carrier complied with Sections 409.021 and 409.022, and did not waive its right to contest compensability of the claimed injury. We reverse the hearing officer’s finding that the self-insured filed its “cert-21” disputing the claimed injury on June 5, 2003, and render a decision that the self-insured filed its “cert-21” on May 28, 2003. Because the self-insured submitted a “cert-21” within seven days of receipt of written notice, we reverse the hearing officer’s waiver determination and render a decision that the carrier did not waive its right to dispute the injury under Section 409.021.

With regard to the hearing officer’s injury determination, the hearing officer comments that the claimant did not meet her burden of proof to establish that she suffered an aggravation of her preexisting bronchial/asthmatic condition due to her employment conditions. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. In the instant case, the evidence sufficiently supports the hearing officer’s Finding of Fact No. 4, that on _____, the claimant did not sustain damage or harm to her person in the form of occupational exposure while in the course and scope of her employment with the employer.

Since we have reversed the hearing officer’s carrier waiver determination and rendered a decision that the self-insured did not waive the right to contest compensability, we reverse the hearing officer’s Conclusion of Law No. 3 (that the claimant sustained a compensable injury as a matter of law) and render a decision based on Finding of Fact No. 4, that the claimant did not sustain a compensable injury on _____.

With regard to disability, the existence of a compensable injury is a prerequisite to finding disability. Section 401.011(16). Given our reversal of the determination that the claimant sustained a compensable injury, we likewise reverse the hearing officer’s disability determination and render a decision that the claimant did not have disability.

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

**CSC-THE U.S. CORPORATION COMPANY
400 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge