

APPEAL NO. 040036
FILED FEBRUARY 17, 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 December 16, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a work-related injury, but sustained a compensable injury on _____, as the respondent (carrier) waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022; that the claimant did not timely notify his employer of a work-related injury of _____, but the carrier is not relieved from liability under Section 409.002 as the carrier waived the right to contest compensability of the claimed injury; that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a private health insurance policy; and that the claimant had disability resulting from the compensable injury of _____, beginning on May 24, 2003, and continuing through August 5, 2003. The carrier appealed, disputing the determination of carrier waiver. The carrier argues that the hearing officer erred in only considering the dated and filed Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated July 17, 2003, and failed to consider Texas Workers' Compensation Commission (Commission) Advisory 2001-02 which permits filing of "cert-21s" by electronic transmission. The claimant responds, urging affirmance of the waiver determination.

DECISION

Reversed and rendered.

Section 409.021 provides, in pertinent part, that 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 Commission and the employee in writing of its refusal to pay benefits. 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 this requirement to mean that a carrier must take some action within seven days after receiving written notice of an injury, and we admonished that a carrier which does nothing and later asserts that it "intended to pay in accordance with the 1989 Act [when benefits accrued]," does so at its own risk. The hearing officer found that the carrier received written notice of the claimed _____, injury on July 9, 2003. Although there is conflicting evidence as to the date the carrier first received written notice, there is sufficient evidence to support the hearing officer's finding that first written notice was received by the carrier on July 9, 2003. The hearing officer additionally found that the carrier did not timely initiate benefits or file a TWCC-21 disputing compensability until July 17, 2003. In Texas Workers' Compensation Commission Appeal No. 032619-s, decided November 13, 2003, the Appeals Panel held that the hearing officer should take official notice of the Commission's acknowledgement of receipt of a "cert-21" offered at the hearing as

an exhibit because it is in effect a Commission record. In the instant case, the “cert 21” was offered and admitted into evidence. The procedure for submitting a “cert-21” was established by Advisory 2002-15, dated September 12, 2002. The Advisory specified that the Commission will continue to provide acknowledgement of an insurance carrier’s agreement to pay benefits as they accrue and are due. The “cert-21” acknowledgement from the Commission in evidence is dated July 11, 2003. Because the carrier filed the “cert-21” within the seven-day period, the hearing officer erred in concluding that the carrier waived the right to contest the compensability of the injury. We reverse the hearing officer’s determination that the carrier waived the right to contest the compensability of the injury and render a decision that the carrier did not waive the right to contest the compensability of the injury.

The hearing officer found that during the course and scope of his employment on _____, the claimant did not injure his low back and that the claimant did not timely notify his employer of the claimed _____, work-related injury. These findings were not appealed. The conclusion that the claimant sustained a compensable injury and that the carrier is not relieved from liability under Section 409.002 are premised on the determination of waiver. Because we have rendered a decision that the carrier did not waive the right to contest the compensability of the injury, we reverse the determinations that the claimant sustained a compensable injury and that the carrier is not relieved from liability under Section 409.002 and render a decision that the claimant did not sustain a compensable injury and that the carrier is relieved from liability under Section 409.002 because the claimant did not timely notify his employer of the claimed work-related injury of _____.

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have rendered a decision that the claimant did not sustain a compensable injury, we likewise render a decision that he did not have disability.

The true corporate name of the insurance carrier is **TRANSPORTATION INSURANCE COMPANY** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge