

APPEAL NO. 041352  
FILED JULY 27, 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 April 27, 2004. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a work-related repetitive trauma injury with a date of injury of \_\_\_\_\_; that the respondent (self-insured) waived the right to contest compensability of the claimed bilateral carpal tunnel syndrome (BCTS) by not timely contesting the injury in accordance with Section 409.021 and Section 409.022; that the compensable injury does not extend to nor include brachial neuritis/radiculitis, cervical disc displacement, muscle spasms, or thoracic outlet syndrome; and that the claimant did not have disability resulting from the compensable BCTS injury. The claimant appeals the extent-of-injury and disability determinations and argues that the hearing officer improperly took official notice of Texas Workers' Compensation Commission (Commission) records in order to obtain the dates upon which the self-insured filed its three Payment of Compensation or Notice of Refused/Disputed Claim forms (TWCC-21). The appeal file contains no response from the self-insured. The waiver determination has not been appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The hearing officer did not err in taking official notice of Commission records indicating when the TWCC-21s were filed by the self-insured. The Appeals Panel has held that where timeliness or sufficiency of the TWCC-21 is in issue, the hearing officer should take official notice of that form and the date it was filed, if necessary, to ensure full development of the facts in accordance with Section 410.163(b). Texas Workers' Compensation Commission Appeal No. 941171, decided October 17, 1994. For this reason, we perceive no error in the hearing officer's effort to resolve the disputed waiver issue by taking official notice of Commission records.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (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. However, we have said that the 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 October 9, 2002. The hearing officer found that although the claimant did not sustain a work-related repetitive trauma injury, because the self-

insured failed to initiate the payment of benefits or to dispute the claimed injury within seven days after first receiving written notice of an injury, the BCTS injury became compensable as a matter of law.

The hearing officer explained that only the BCTS injury was compensable because the “first written notice of injury to the [self-insured] supported an injury for [BCTS] and not for brachial neuritis/radiculitis, cervical disc displacement, muscle spasms, and thoracic outlet syndrome.” However, the aforementioned explanation does not accurately reflect the evidence in this case. The employer identified the injury in the “EMPLOYEE INJURY REPORT” as “pain and numbness on both hands and back upper neck and all of the back.” In the first TWCC-21 filed by the self-insured, which is dated January 25, 2001, the nature of the injury was identified as “STRAIN MULTIPLE BODY PARTS,” not BCTS as identified by the hearing officer. The medical records reflect that prior to January 15, 2001, the date upon which the self-insured first received written notice of the claimed injury, the claimant had been evaluated for conditions in addition to BCTS. In a report dated January 16, 2001, four days after first receiving written notice of an injury, the self-insured peer review doctor, Dr. T, opined that the BCTS was not related to the claimant’s work and also stated “I would additionally advise that a TWCC-21 report should be filed for not only [BCTS], but forearm pain, neck pain, and right foot tingling and parenthesis.” Given these facts, and the medical evidence in this case, the hearing officer erred in determining that the self-insured waived into only the BCTS injury. The hearing officer’s extent determination is reversed and a new decision rendered that the self-insured waived the right to dispute the claimed injury and, consequently, the claimant’s BCTS, brachial neuritis/radiculitis, cervical disc displacement, muscle spasms, or thoracic outlet syndrome became compensable as a matter of law.

The hearing officer’s disability determination was based on the fact that the compensable injury did not include brachial neuritis/radiculitis, cervical disc displacement, muscle spasms, or thoracic outlet syndrome. Because we have rendered a new decision that the alleged conditions are compensable, and because the medical evidence supports that due to the compensable injury, the claimant had the inability to earn her preinjury wage (Section 401.011(16)), we also reverse the determination that the claimant did not have disability and render a new decision that the claimant had disability from December 15, 2002, through the date of the hearing.

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

**SUPERINTENDENT  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Chris Cowan  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Edward Vilano  
Appeals Judge