

APPEAL NO. 041573
FILED AUGUST 23, 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 May 28, 2004. The hearing officer resolved the disputes issues by deciding: (1) that the respondent (claimant) did not sustain an injury in the course and scope of employment on _____; (2) that the claimed injury is to the low back; (3) that the claimant's _____, claimed injury is compensable due to the appellant's (carrier) waiver of the right to contest the compensability of that injury; and (4) that since the _____, injury is compensable as a matter of law, the claimant had disability on October 22 and October 23, 2003, and again beginning on October 25, 2003, and continuing through the date of the CCH. The carrier appeals the waiver determination, arguing that the claimant failed to meet his burden of proof to establish a date upon which the carrier first received written notice of the claimed injury. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The hearing officer found that the claimant sustained a low back injury, but that it did not occur in the course and scope of employment. This finding was not appealed. However, the hearing officer concluded that the claimed injury of _____, is compensable as a matter of law because the carrier waived the right to contest the compensability of that injury.

Section 409.021(a) provides that for injuries occurring on or after September 1, 2003, not later than the 15th day after the date on which an insurance carrier receives written notice of an injury, an insurance carrier shall begin the payment of benefits as required by this subtitle; or notify the Texas Workers' Compensation Commission (Commission) and the claimant in writing of its refusal to pay. Further, Section 409.021(a-1) provides that a carrier which fails to comply with subsection (a) does not waive the carrier's right to contest the compensability of the injury as provided by subsection (c) but commits an administrative violation subject to subsection (e). Finally, Section 409.021(c) provides that if a carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability.

In the instant case, the record reflects that the Commission acknowledged receiving the carrier's "cert-21" on December 1, 2003, in which the carrier acknowledged receiving written notice of the claim on November 24, 2003, and agreed to pay benefits as they accrue; and that the carrier disputed the claim by filing a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) with the Commission on January 26, 2004. The carrier argues that the "reliance by the claimant

on a date reflected by a TWCC-21, without initiating any further verification or confirmation, is insufficient to establish, by a preponderance, that the carrier first received written notice on November 24, 2003, and, accordingly, the claimant has failed to meet his burden of proof in this regard." We disagree. The "cert-21" in evidence was dated November 24, 2003, and both the "cert-21" and the TWCC-21 which disputed the injury, acknowledged the carrier's first written notice of injury was received on November 24, 2003. Accordingly, the hearing officer did not err in determining that the carrier waived its right to contest compensability in this case.

We affirm the decision and order of the hearing officer.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge