

APPEAL NO. 041637  
FILED AUGUST 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 (CCH) was held on June 10, 2004. The hearing officer determined that the respondent's (claimant) compensable injury includes aggravation of chondromalacia, degenerative changes of the medial and lateral meniscus with a possible tear, and aggravation of the degenerative changes in the patellofemoral joint tendonitis (the claimed conditions), and that the appellant (carrier) waived the right to contest compensability of the claimed injury by not contesting it in accordance with Sections 409.021 and 409.022 of the 1989 Act.

The carrier appeals, contending that a Benefit Dispute Agreement (TWCC-24) signed on January 21, 2004, accepted a right knee sprain/strain and provided that the extent of injury would be litigated in the future and therefore there was no carrier waiver. The carrier also disputed the extent issue on the basis that the emergency room (ER) records only note a sprain/strain. The file does not contain a response from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a right knee injury on \_\_\_\_\_ (not the incident in question in this case). The medical records are conflicting whether that injury was a ligament sprain with degenerative medial and lateral meniscus changes or whether it involved a right knee meniscal tear. The parties stipulated that the claimant sustained a compensable injury on March 21, 2003, in a fall to both knees. It appears undisputed that the carrier received written notice of this claim on March 27, 2003, and accepted and paid benefits pursuant to Section 409.021(a)(1). The initial ER record of March 21, 2003, references "tore meniscus 1 yr ago" and diagnoses a knee sprain. Reports dated April 8 and May 6, 2003, from the treating doctor reference right medial and lateral meniscus degenerative changes. A carrier required medical examination doctor in a report dated June 13, 2003, notes "[m]edial and lateral meniscus tears, by history" and is of the opinion that the claimant's "current medical condition is related to the pre-existing conditions." The carrier, in a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated and filed with the Texas Workers' Compensation Commission on July 2, 2003, denied the claim in its entirety based on the premise that the claimant's condition was preexisting "from an earlier injury of one year ago." 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 carrier received written notice of the injury, the carrier waives its right to contest compensability.

With regard to the carrier's argument that the claimant waived the right to assert a carrier waiver issue because of the TWCC-24 signed on January 21, 2004, the hearing officer, in his Background Information, correctly explained that the January 21, 2004, CCH only resolved the compensability issue leaving open ("reserved") the issues of extent of injury, disability and carrier waiver.

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. 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. In this case the primary claimed injury was the question of whether the claimant had a meniscus tear or whether the condition consisted of preexisting degenerative changes. The hearing officer commented that the claimant's "right knee problem has always been degenerative changes which may or may not have been aggravated by this injury, and possible tears to the meniscus which may or may not have been preexisting . . . . Clearly, degenerative changes and possible tears have been part of this injury claim from the beginning [i.e. the primary claimed injury] and failure to timely dispute these conditions has resulted in waiver." We agree.

The hearing officer further found that the claimed conditions had been aggravated by the compensable injury of March 21, 2003. We have reviewed the complained-of determinations and conclude that the hearing officer did not err as a matter of law and that his determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE 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.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Edward Vilano  
Appeals Judge