

APPEAL NO. 070064
FILED MARCH 13, 2007

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 29, 2006. The record closed on December 11, 2006. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) did not sustain a compensable injury on _____, and that the claimant did not have disability resulting from the claimed injury of _____. The appellant (carrier) appealed, arguing the hearing officer failed to resolve all of the disputed issues because he did not make a determination on the timely notice issue. The hearing officer's determinations regarding the issues of compensable injury and disability have not been appealed and therefore have become final pursuant to Section 410.169. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

The following three issues were identified in the benefit review conference report as in dispute: 1. Did the claimant sustain a compensable injury on _____?; 2. Did the claimant have disability resulting from an injury sustained on _____, and, if so, for what periods?; and 3. Is the carrier relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer of an injury pursuant to Section 409.001? The claimant failed to appear at the CCH. The carrier appeared but reserved its right to present evidence. The hearing officer sent a 10-day letter to the claimant dated November 30, 2006. The letter advised the claimant that he had 10 days to request that the CCH be reconvened, and if he did so, he would be allowed to present evidence on the disputed issues and show good cause why he failed to attend the November 29, 2006, CCH. No response was received from the claimant to this letter. The hearing officer then prepared his decision and order. The record reflects that the hearing officer followed the established procedure. See Appeals Panel Decision (APD) 041996, decided September 30, 2004.

The hearing officer noted in the background portion of his decision and order that "[s]ince the claimant failed to appear and present evidence in support of the disputed issues, the claimant has not met his burden of proof on those issues." Whether or not the claimant timely reported an injury to his employer pursuant to Section 409.001 was at issue in the CCH. However, the hearing officer failed to make a finding of fact or conclusion of law on that issue.

Section 409.001(a) provides that, for injuries other than an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the injury occurs. Section 409.002 provides that failure to notify an employer as required by

Section 409.001(a) relieves the employer and the employer's insurance carrier of liability unless the employer or carrier has actual knowledge of the employee's injury, the Texas Department of Insurance, Division of Workers' Compensation determines that good cause exists for failure to provide notice in a timely manner, or the employer or the employer's insurance carrier does not contest the claim. The claimant had the burden to prove that he timely reported his injury to his employer. Travelers Insurance Company v. Miller, 390 S.W. 2d 284 (Tex. Civ. App.-El Paso 1965, no writ); APD 002533, decided December 8, 2000. Since no evidence was presented on the timely notice issue, the claimant failed to meet his burden of proof on that issue. The hearing officer erred in failing to resolve all of the disputed issues.

We reverse the hearing officer's decision to the extent it fails to address all of the disputed issues and render a new determination that the carrier is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer of an injury pursuant to Section 409.001.

The true corporate name of the insurance carrier is **GREAT AMERICAN INSURANCE COMPANY OF NEW YORK** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge