

APPEAL NO. 070537
FILED MAY 24, 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 February 20, 2007. The hearing officer resolved the disputed issues by deciding that the compensable injury of _____, extends to cervical spine stenosis, lumbar spondylolysis, and degenerative disc disease, and that the appellant (self-insured) waived the right to contest the compensability of the cervical spine stenosis, lumbar spondylolysis, and degenerative disc disease by not timely contesting the injury in accordance with Sections 409.021 and 409.022. The self-insured appealed, disputing both the extent of injury and waiver determinations. The respondent (claimant) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on _____; that the self-insured received written notice of a claimed injury on August 22, 2005; and that the self-insured disputed the cervical spine stenosis, lumbar spondylolysis, and degenerative disc disease by filing a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11) on May 22, 2006. The claimant testified that he sustained injuries to his back and neck in a motor vehicle accident while in the course and scope of his employment.

WAIVER

Section 409.021 provides that for claims based on a compensable injury that occurred on or after September 1, 2003, that no later than the 15th day after the date on which an insurance carrier receives written notice of an injury, the insurance carrier shall: (1) begin the payment of benefits as required by the 1989 Act; or (2) notify the Texas Department of Insurance, Division of Workers' Compensation and the employee in writing of its refusal to pay. Section 409.021(c) provides that if an insurance 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. 28 TEX. ADMIN. CODE § 124.3(e) (Rule 124.3(e)) provides that Section 409.021 does not apply to disputes of extent of injury. In Appeals Panel Decision (APD) 041738-s, decided September 8, 2004, the Appeals Panel established that when a carrier does not timely dispute the compensability of an injury, the compensable injury is defined by the information that could have been reasonably discovered by the carrier's investigation prior to the expiration of the waiver period.

The hearing officer found that the self-insured, through a reasonable investigation, could have determined within 60 days following August 22, 2005, that the

cervical spine stenosis, lumbar spondylolysis, and degenerative disc disease were part of the claimed injury. The evidence supports the hearing officer's finding as to the cervical spine stenosis and lumbar spondylolysis. There are medical records in evidence dated within the waiver period that contain diagnoses of cervical spine stenosis and lumbar spondylolysis. However, there is no medical record in evidence dated within the waiver period that contains a diagnosis of degenerative disc disease. The two MRIs taken prior to the expiration of the waiver period contain multiple findings and impressions of the claimant's lumbar and cervical spine but neither specifically mention degenerative disc disease. No medical record dated within the waiver period specifically mentions nor would reasonably disclose degenerative disc disease. The hearing officer's determination that the self-insured, through a reasonable investigation, could have determined within 60 days following August 22, 2005, that the degenerative disc disease was part of the claimed injury is against the great weight and preponderance of the evidence. We reverse the hearing officer's determination that the self-insured waived the right to contest the compensability of degenerative disc disease by not timely contesting the injury in accordance with Sections 409.021 and 409.022 and render a new decision that the self-insured did not waive the right to contest the compensability of degenerative disc disease. There is sufficient evidence to support the hearing officer's determination that the self-insured waived the right to contest the compensability of the cervical spine stenosis and lumbar spondylolysis by not timely contesting the injury in accordance with Section 409.021.

EXTENT OF INJURY

Conflicting evidence was presented at the CCH on the issue of extent of injury. There is sufficient evidence in the record to support the hearing officer's determination that the compensable injury of _____, extends to cervical spine stenosis, lumbar spondylolysis, and degenerative disc disease.

SUMMARY

We affirm the hearing officer's determination that the compensable injury extends to cervical spine stenosis, lumbar spondylolysis, and degenerative disc disease. We affirm the hearing officer's determination that the self-insured waived the right to contest the compensability of the cervical spine stenosis and lumbar spondylolysis by not timely contesting the injury in accordance with Section 409.021. We reverse the hearing officer's determination that the self-insured waived the right to contest the compensability of degenerative disc disease by not timely contesting the injury in accordance with Section 409.021 and render a new determination that the self-insured did not waive the right to contest the compensability of degenerative disc disease by not timely contesting the injury in accordance with Section 409.021.

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

**CITY SECRETARY
(ADDRESS)
(CITY)S, TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge