

APPEAL NO. 070912
FILED JULY 23, 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 was held on April 2, 2007. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on _____; (2) the appellant (self-insured) is not relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001; and (3) the self-insured waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022.

The self-insured appealed the hearing officer's compensable injury, timely notice, and carrier waiver determinations. The claimant responded, urging affirmance.

DECISION

Reversed and rendered in part, and affirmed in part.

COMPENSABLE INJURY AND TIMELY NOTICE

The hearing officer's compensable injury and timely notice determinations are supported by the evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and we affirm.

CARRIER 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. For a claim for workers' compensation benefits based on a compensable injury that occurs on or after September 1, 2003, Section 409.021(f)(2) provides that a political subdivision that self-insures under Section 504.011, either individually or through an interlocal agreement with other political subdivisions, receives notice on the date the intergovernmental risk pool or other entity responsible for administering the claim for the political subdivision receives notice. Section 504.001(3) defines a "political subdivision" as including a school district. The self-insured is a school district. Section 504.002(d) provides that "written notice" to a political subdivision that self-insures, either individually or collectively through an interlocal agreement as described by Section 504.011, occurs only on written notice to

the intergovernmental risk pool or other entity responsible for administering the claim. Section 504.011 provides that a political subdivision shall extend workers' compensation benefits to its employees by: (1) becoming a self-insurer; (2) providing insurance under a workers' compensation insurance policy; or (3) entering into an interlocal agreement with other political subdivisions providing for self-insurance.

In evidence is a Notice of Denial of Compensation/Liability and Refusal to Pay Benefits (PLN-1) dated August 31, 2005, that lists the self-insured as Texas Association of School Boards (TASB). The PLN-1 states that "[o]n 5/24/2004, [TASB] received notice that you reported an on the job injury. [TASB is] denying your claim for workers' compensation benefits." The PLN-1 stated grounds for the refusal. A "Workers' Compensation-First Report of Injury or Illness" form "IA-1" prepared by the employer's "Assistant Superintendent" on August 10, 2005, lists the following information: Date of injury/illness "_____"; Date employer notified "05/28/2005"; Date administrator notified "06/21/2005"; and Date prepared "08/10/2005". An affidavit from the adjuster dated September 21, 2006, states that the First Report of Injury form was received by TASB on August 11, 2005, and that her investigation began on August 12, 2005, when she was assigned to be the adjuster to the claim. The adjuster's affidavit states:

Based upon my investigations, I completed the PLN-1, but mistakenly referenced (incorrect date of injury) as the date TASB received written notice. Rather, _____, not (incorrect date of injury), is the date that [the claimant] claims she was injured, not the date that an injury was reported. None of the documentation provided by [employer], or other information, confirms TASB's notice as of (incorrect date of injury). Rather the first written notice or otherwise by TASB occurred on August 11, 2005.

When a claimant asserts that the carrier has waived the right to contest compensability, the claimant has the burden to prove when the carrier received the first written notice of injury and, once that is done, the burden shifts to the carrier to prove that it timely filed a dispute. Appeals Panel Decision 051656, decided September 14, 2005. In this case, the hearing officer failed to make a finding as to the date the self-insured received first written notice. However, the hearing officer found that the "[s]elf-insured failed to demonstrate by a preponderance of the credible evidence presented that it disputed the claimed injury of _____, within [60]¹ days of its first written notice of the claimed injury." The hearing officer determined that the self-insured waived the right to contest compensability of the claimed injury.

The PLN-1 states that "[o]n (incorrect date of injury), [TASB] received notice that you reported an on the job injury." However, this date cannot be adopted because this is a date prior to the date of injury of "_____." Further, the claimant testified that she reported her injury to her employer on May 25, 2005. The "Workers'

¹ We note that the hearing officer made a typographical error by referring to the waiver period as "30" days rather than "60" days because the hearing officer's discussion specifically states that the "[s]elf-insured failed to demonstrate by a preponderance of the credible evidence admitted that Self-Insured disputed the _____ claimed injury within 60 days of its first written notice of the claimed injury."

Compensation-First Report of Injury or Illness” form “IA-1” prepared by the employer states that the “Administrator” received notice on June 21, 2005. This date cannot be adopted because there is no evidence that the notice was in writing. The adjuster’s affidavit states that TASB received first written notice on August 11, 2005. This is the only date that is supported by the evidence to show when the self-insured first received written notice of the claimed injury. Based on the evidence, we hold that the self-insured received first written notice on August 11, 2005.

By holding that the self-insured received first written notice on August 11, 2005, and the evidence establishes that the self-insured disputed the claimed injury on August 31, 2005, the self-insured timely disputed the compensability of the claimed injury. Accordingly, we reverse the hearing officer’s determination that the self-insured waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021, and render a new decision that the self-insured did not waive the right to contest compensability of the claimed injury by timely contesting the injury in accordance with Section 409.021.

SUMMARY

We affirm the hearing officer’s compensable injury and timely notice determinations. We reverse the hearing officer’s carrier waiver determination and render a new decision that the self-insured did not waive the right to contest compensability of the claimed injury by timely contesting the injury in accordance with Sections 409.021 and 409.022.

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).**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas L. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge