

APPEAL NO. 071298
FILED SEPTEMBER 10, 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 June 14, 2007.

With regard to Docket No. 1 the disputed issue was:

1. Does the compensable injury of (date of injury for Docket No. 1), extend to include a medial collateral ligament injury with a recurrent medial meniscal tear of the right knee?

With the regard to Docket No. 2 the disputed issues were:

1. Did the appellant (claimant) sustain a compensable injury on (date of injury for Docket No. 2)?
2. Did the Claimant have disability resulting from an injury sustained on (date of injury for Docket No. 2), and if so, for what period(s)?
3. Is the respondent (carrier) liable for the payment of accrued benefits pursuant to 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3) resulting from its failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury?

The hearing officer added the following issue stating it was actually litigated:

1. Does the hearing officer have jurisdiction to determine carrier's liability under Rule 124.3?

With regard to those issues the hearing officer determined that: (1) the claimant did not sustain a compensable injury on (date of injury for Docket No. 2); (2) because the claimant did not sustain a compensable injury on (date of injury for Docket No. 2), the claimant did not have disability; (3) the compensable injury of (date of injury for Docket No. 1), extends to include a medial collateral ligament injury with a recurrent medial meniscal tear of the right knee; and (4) the carrier's liability for the payment of accrued benefits pursuant to Rule 124.3 resulting from its failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury is an action assessed under Rule 124.3(a)(4)(A).

The claimant appealed, contending that she had been injured on (date of injury for Docket No. 2); that she had disability due to the (date of injury for Docket No. 2), injury; and that the hearing officer erred in failing to answer the "certified disputed issue" regarding the carrier's liability under Rule 124.3(a). The claimant also contends that the

compensable injury of (date of injury for Docket No. 1), does not extend to include a medial collateral ligament injury with a recurrent medial meniscus tear of the right knee, contending that injury is due to a (date of injury for Docket No. 2), incident. The carrier responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

It is undisputed that the claimant sustained a compensable right knee injury on (date of injury for Docket No. 1), in a fall at work. The claimant contended that she sustained another work-related injury to her right knee on (date of injury for Docket No. 2).

INJURY, DISABILITY, AND EXTENT OF INJURY

The hearing officer's determinations that the claimant did not sustain a compensable injury on (date of injury for Docket No. 2), and did not have disability due to the claimed (date of injury for Docket No. 2), incident are supported by sufficient evidence and are affirmed. The hearing officer also determined that the compensable injury of (date of injury for Docket No. 1), extended to include a medial collateral ligament injury with a recurrent medial meniscal tear of the right knee. That determination is supported by sufficient evidence and is affirmed.

RULE 124.3

The hearing officer determined that the carrier's liability under Rule 124.3 is an action that is assessed under Rule 124.3(a)(4)(A), which pertains to potential administrative violations, but the hearing officer failed to address the issue of liability under Rule 124.3(a) regarding the carrier's liability for accrued benefits for failure to dispute or initiate the payment of benefits by the 15th day after receipt of the written notice of the injury.

To answer the question of whether the carrier is liable for the payment of accrued benefits resulting from its failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury, one must first determine when the carrier received written notice of the (date of injury for Docket No. 2), claimed injury. Rule 124.1(a) defines what constitutes written notice of the injury. The claimant had the burden of proof to establish the date that the carrier received written notice of the (date of injury for Docket No. 2), claimed injury. See Appeals Panel Decision (APD) 051656, decided September 14, 2005. While there are documents in evidence, such as the Work Status Report (DWC-73) dated February 6, 2007, and an accompanying report signed February 8, 2007, which reference a new injury on (date of injury for Docket No. 2), there is no evidence to indicate that those documents were received by the carrier. Although it is undisputed that the carrier denied the claimed (date of injury for Docket

No. 2), injury on February 26, 2007, there is no evidence when the carrier received the first written notice of the claimed (date of injury for Docket No. 2), injury.

The hearing officer erred by failing to make a determination on the issue of whether the carrier was liable for payment of accrued benefits pursuant to Rule 124.3 resulting from its failure to dispute or initiate the payment of the benefits within 15 days of the date it received written notice of the injury. Normally we would reverse the hearing officer's decision as being incomplete and remand the case for the hearing officer to consider and make findings on the issue. See APD 062446, decided January 18, 2007. However, in this case, because there is no evidence regarding when written notice of the claimed (date of injury for Docket No. 2), injury was given to the carrier, there is no date that starts the 15 day period after receipt of written notice of the claimed injury. Because there is no start date the period of time that the carrier had to dispute or initiate benefits cannot be determined. We reverse the hearing officer's decision as being incomplete and render a new decision that the carrier is not liable for the payment of accrued benefits pursuant to Rule 124.3 resulting from a failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury, because there is no evidence when the carrier received written notice of the claimed (date of injury for Docket No. 2), injury.

SUMMARY

We affirm the hearing officer's determinations that the claimant did not sustain a compensable injury on (date of injury for Docket No. 2); that the claimant did not have disability due to the claimed (date of injury for Docket No. 2), incident; and that the compensable injury of (date of injury for Docket No. 1), extends to include a medial collateral ligament injury with a recurrent medial meniscal tear of the right knee. We reverse the hearing officer's decision as being incomplete and failing to address the issue of whether the carrier is liable for accrued benefits pursuant to Rule 124.3 resulting from its failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury. We render a new decision that the carrier is not liable for the payment of accrued benefits pursuant to Rule 124.3 because there is no evidence when the carrier received first written notice of the claimed (date of injury for Docket No. 2), injury.

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

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge