

APPEAL NO. 071580
FILED OCTOBER 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 (CCH) was held on July 19, 2007. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) sustained a compensable repetitive trauma injury with a date of injury of _____; (2) the claimant has sustained disability from February 21, 2007, through the date of the CCH; (3) the appellant's (carrier) contest of compensability was not based on newly discovered evidence that could not reasonably have been discovered at an earlier date and the carrier is not allowed to reopen the issue of compensability; (4) the compensable injury sustained on _____, does extend to and include right carpal tunnel syndrome (CTS) and right rotator cuff tear; and (5) the carrier has waived the right to contest compensability of the claimed diagnoses of right CTS and right rotator cuff tear by not timely contesting the injury in accordance with Section 409.021. The carrier appealed, disputing the hearing officer's determinations of compensability, disability, extent of injury, and waiver. Additionally, the carrier contends that its contest of the right CTS was timely because it was based on newly discovered evidence. The carrier also appeals the hearing officer's denial of its request at the CCH to add the issue of timely notice to the employer. The claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

WAIVER

The claimant testified that on _____, she was working as an assembler of auto parts and while reaching overhead, she felt a sharp pain shoot from her right wrist up to her right shoulder. The parties stipulated that the carrier received written notice of the injury on November 20, 2006. On December 13, 2006, the carrier filed a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11) which stated: "[c]arrier accepts CTS of right hand/wrist & right strain shoulder & neck injury only. The carrier disputes any other diagnosis or extent of injury as not related to accepted compensable injury. Carrier disputes compensability, medical treatment and disability of any and all other alleged injuries."

Section 409.021 provides that for claims based on a compensable injury that occurred on or after September 1, 2003, that not 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.

Prior Appeals Panel decisions have recognized that disputes containing limitation language are sufficient to dispute any injury other than the one specifically accepted. In Appeals Panel Decision (APD) 000119, decided March 6, 2000, the dispute contained the following language: "Carrier disputes that the compensable injury extends to both shoulders or any other body part. The compensable (date of injury for APD 000119) injury is limited to the lumbar area only." In that case the hearing officer's determination that the carrier waived its right to contest compensability of the cervical injury was reversed and a new decision rendered that the carrier did not waive its right to contest the compensability of the cervical injury. See also APD 980670, decided May 18, 1998.

It is undisputed that the carrier in the instant case filed the PLN-11 within 60 days of written notice of the claimed injury. The dispute filed by the carrier in this case was sufficiently specific to dispute any claimed injury other than right CTS, strain of the right shoulder, and neck injury. We affirm the hearing officer's decision that the carrier has waived the right to contest compensability of the right CTS. We reverse the hearing officer's determination that the carrier has waived the right to contest compensability of the claimed right rotator cuff tear by not timely contesting the injury in accordance with Section 409.021 and render a new determination that the carrier has not waived the right to contest compensability of the claimed right rotator cuff tear by not timely contesting the injury in accordance with Section 409.021.

COMPENSABLE REPETITIVE TRAUMA INJURY, EXTENT OF INJURY, AND DISABILITY

The hearing officer did not abuse her discretion by refusing to add the issue of timely notice to employer as required by Section 409.001. The hearing officer did not err in her determination that the carrier's contest of compensability was not based on newly discovered evidence that could not reasonably have been discovered at an earlier date. See APD 040959, decided June 16, 2004. However, even if this did amount to error, the issue of whether or not the claimant sustained a compensable repetitive trauma injury and the extent of that injury were issues before the hearing officer and were issues which she resolved at the CCH. The hearing officer found that the evidence was sufficient and causally related the diagnosis of a tear to the right shoulder and right CTS to the work activities performed by the claimant on _____.

The hearing officer's determinations that the claimant sustained a compensable repetitive trauma injury with a date of injury of _____;¹ that the compensable injury sustained on _____, extends to include right CTS and right rotator cuff tear; and that the claimant had disability from February 21, 2007, _____

¹ We note that Finding of Fact Nos. 3 and 4 mistakenly refer to (incorrect date of injury), rather than the date of injury found by the hearing officer of _____. It is clear from the context of the decision that this mistaken date is a clerical error.

through the date of the CCH as a result of the compensable injury sustained on _____, are supported by sufficient evidence and are affirmed.

SUMMARY

We affirm the hearing officer's determinations that the claimant sustained a compensable repetitive trauma injury with a date of injury of _____; that the compensable injury sustained on _____, does extend to include right CTS and right rotator cuff tear; that the claimant had disability from February 21, 2007, through the date of the CCH; and that the carrier's contest of compensability was not based on newly discovered evidence that could not reasonably have been discovered at an earlier date and the carrier is not allowed to reopen the issue of compensability. We affirm the hearing officer's determination that the carrier has waived the right to contest compensability of the claimed diagnosis of right CTS by not timely contesting the injury in accordance with Section 409.021.

We reverse the hearing officer's determination that the carrier has waived the right to contest compensability of the claimed diagnosis of right rotator cuff tear by not timely contesting the injury in accordance with Section 409.021 and render a new determination that the carrier has not waived the right to contest compensability of the claimed diagnosis of right rotator cuff tear by not timely contesting the injury in accordance with Section 409.021.

The true corporate name of the insurance carrier is **PACIFIC INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

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

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge