

APPEAL NO. 071937
FILED DECEMBER 12, 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 September 24, 2007. With regard to the two issues before him the hearing officer determined that: (1) the compensable injury of _____, includes protrusions at C3-4 and C5-6, annular bulges at C5-6 and C6-7 and herniated discs at T12-L1 and L4-5; and (2) the appellant (carrier) waived the right to contest compensability of the protrusions at C3-4 and C5-6, annular bulges at C5-6 and C6-7, and herniated discs at T12-L1 and L4-5 injuries by not timely contesting the injury in accordance with Section 409.021.

The carrier appealed on a number of grounds, including that the carrier had timely disputed the claimed conditions. 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 neck sprain/strain and lumbar sprain/strain injury in the course and scope of employment with the employer on _____, and that the carrier received written notice of a claimed injury on September 12, 2006.

EXTENT OF INJURY

The hearing officer's decision on the extent-of-injury issue is supported by sufficient evidence and is affirmed.

WAIVER

The claimant was sent to the emergency room on _____. At that time a CT of the cervical spine was performed. Subsequently, MRIs of the cervical and lumbar spine were performed on September 12, 2006. The carrier received written notice of the injury on September 12, 2006, and filed a Notice of Disputed Issues and Refusal to Pay Benefits (PLN-11) dated September 26, 2006, on September 27, 2006. The PLN-11 stated:

Carrier respectfully disputes the diagnoses of canal narrowing, osteophytes, congenital & degenerative findings & stenosis. Carrier finds that the extension of injury/disease did not occur as a direct result of the incident nor in course and scope of his employment with employer. Carrier further contends that said diagnoses as demonstrated by MRI

findings are ordinary diseases of life to which the general public is exposed outside of employment with employer and are not as a result of the incident that occurred on _____.

The carrier waiver issue reported out of the benefit review conference was phrased “[h]as carrier waived the right to contest compensability of the cervical and lumbar spine injuries by not timely contesting the diagnoses in accordance with Texas Labor Code Section 409.021 and Section 409.022?” The claimant’s position was that the carrier was aware of these diagnoses on _____, and has not filed a dispute of these conditions. The carrier’s position was that it had disputed these conditions on September 27, 2006. The hearing officer, in the issues portion of the decision, states that “at the unanimous request of the parties, the disputed issues were amended” to include specific protrusions, bulges and herniations at specific levels of the spine. The carrier in its appeal contends that it had objected to the phrasing of the waiver issue, however the carrier did agree “[w]ith regard to the more specific diagnoses” and only objected to “waiver as an issue concerning compensability rather than extent of injury.”

Section 409.021(a) 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. Appeals Panel Decision (APD) 041738-s, decided September 8, 2004, 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.

We note that the disputed issue, as rephrased, does not exactly track the impressions noted in the _____, CT of the cervical spine or the impressions of the cervical and lumbar MRIs performed on September 12, 2006. The PLN-11 dated September 26, 2006, filed well within the 60-day waiver period, disputes some of the impressions of the diagnostic tests, but does not refer to specific levels of the spine, and further disputes “diagnoses as demonstrated by MRI findings” At issue is whether the language contained in the September 26, 2006, PLN-11 was sufficient to raise a dispute to contest compensability of the claimed injuries. No magic words are required and the Appeals Panel has stated that we would look to a fair reading of the reasons listed to determine if the notice of refusal or denial is sufficient. See APD 022145, decided October 15, 2002. A carrier peer review doctor testified that the terms canal narrowing, osteophytes, congenital and degenerative findings and stenosis depict and describe the conditions found on the cervical and lumbar MRIs “perfectly.” In addition the PLN-11 concludes by specifically stating the diagnoses as demonstrated by MRI findings are disputed as not being the result of the _____, incident. We hold that

the language in the September 26, 2006, PLN-11 was sufficient to dispute the claimed conditions of the cervical and lumbar spine.

Accordingly, we reverse the hearing officer's determination that the carrier waived the right to contest compensability of the protrusions at C3-4 and C5-6, annular bulges at C5-6 and C6-7, and herniated discs at T12-L1 and L4-5 injuries by not timely contesting the injury in accordance with Section 409.021. We render a new decision that the carrier has not waived the right to contest compensability of the protrusions at C3-4 and C5-6, annular bulges at C5-6 and C6-7, and herniated discs at T12-L1 and L4-5.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of _____, includes protrusions at C3-4 and C5-6, annular bulges at C5-6 and C6-7 and herniated discs at T12-L1 and L4-5. We reverse the hearing officer's determination on the carrier waiver issue and render a new decision that the carrier has not waived the right to contest compensability of the protrusions at C3-4 and C5-6, annular bulges at C5-6 and C6-7, and herniated discs at T12-L1 and L4-5 injuries.

The true corporate name of the insurance carrier is **PUBLIC WORKERS' COMPENSATION PROGRAM** and the name and address of its registered agent for service of process is

**JERRY EDWARDS
1002 MARBLE HEIGHTS DR
MARBLE FALLS, TEXAS 78654.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge