

APPEAL NO. 072129
FILED JANUARY 16, 2008

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 October 16, 2007. The two issues before the hearing officer were:

- (1) Does the compensable injury of _____, extend to and include the diagnosed acute exacerbation of degenerative arthritis/osteoarthritis?
- (2) Has the [respondent (carrier)] waived the right to contest the compensability of the [appellant's (claimant)] injury by not timely contesting the injury in accordance with Section 409.021?

The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of _____, does not include the diagnosed acute exacerbation of degenerative arthritis/osteoarthritis; and (2) the carrier did not waive the right to contest compensability of the claimed injury in accordance with Section 409.021. The claimant appealed, disputing the extent-of-injury and carrier waiver determinations. The carrier responded, urging affirmance.

DECISION

Reversed and rendered.

It is undisputed that the claimant sustained a compensable injury on _____. In an unappealed finding, the hearing officer determined that the carrier received written notice of the injury on August 30, 1996. On December 5, 1996, the claimant underwent a right knee medial meniscectomy for a degenerative medial meniscus tear.

CARRIER WAIVER

Section 409.021(a), effective for a claimed compensable injury that occurred before September 1, 2003, provides that an insurance carrier shall, not later than the seventh day after the receipt of written notice of an injury, begin the payment of benefits as required by the 1989 Act or notify the Texas Department of Insurance, Division of Workers' Compensation and the employee in writing of its refusal to pay benefits. In Appeals Panel Decision (APD) 030380-s, decided April 10, 2003, the Appeals Panel noted that in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), the Texas Supreme Court stated: "Taking some action within 7 days is what entitles the carrier to a 60-day period to investigate or deny compensability."

In this case there is no evidence that the carrier took any action within seven days after receiving written notice of the right knee injury on August 30, 1996, therefore the waiver period is seven days from the date of first written notice of the injury. Accordingly, we reverse the hearing officer decision that the carrier did not waive the right to contest compensability of the claimed injury in accordance with Section 409.021, and we render a new decision that the carrier waived the right to contest compensability of the claimed injury in accordance with Section 409.021.

EXTENT OF INJURY

A medical report dated August 29, 1996, from the claimant's treating doctor¹ notes that the claimant sustained a right knee injury at work and that x-rays of the right knee were obtained to evaluate the injury. An x-ray of the right knee dated August 29, 1996, gives a conclusion of "Moderate osteoarthritic changes of the right knee." A medical report dated September 3, 1996, from the treating doctor² shows that he diagnosed the claimant with an "acute exacerbation of degenerative arthritis of the right knee-improving."

In 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 medical report dated September 3, 1996, and the x-ray dated August 29, 1996, were prior to the expiration of the seven day waiver period. The carrier could have reasonably discovered in its investigation that the diagnosed acute exacerbation of degenerative arthritis/osteoarthritis was part of the claimed injury within the seven day waiver period.³

Given that we have reversed the hearing officer's determination on the waiver issue and rendered a new decision that the carrier waived the right to contest compensability of the claimed injury in accordance with Section 409.021, the carrier waived the right to contest the compensability of the acute exacerbation of degenerative arthritis/osteoarthritis, which the carrier could have reasonably discovered in its investigation prior to the expiration of the waiver period. Accordingly, we reverse the hearing officer's extent-of-injury determination that the compensable injury of _____, does not include the diagnosed acute exacerbation of degenerative arthritis/osteoarthritis and we render a new decision that the compensable injury of _____, does extend to include the diagnosed acute exacerbation of degenerative arthritis/osteoarthritis.

¹ The medical report dated August 29, 1996, lists the treating doctor's name in print as "JC, M.D." however, the report is signed by "RS, M.D."

² The medical report dated September 3, 1996, lists the treating doctor's name in print as "RS, M.D." and it is signed by "RS, M.D."

³ In this case, the parties have apparently equated degenerative arthritis with osteoarthritis given the "degenerative arthritis/osteoarthritis" wording in the issue on extent of injury.

SUMMARY

We reverse the hearing officer decision that the carrier did not waive the right to contest compensability of the claimed injury in accordance with Section 409.021, and we render a new decision that the carrier waived the right to contest compensability of the claimed injury in accordance with Section 409.021. We reverse the hearing officer's decision that the compensable injury of _____, does not include the diagnosed acute exacerbation of degenerative arthritis/osteoarthritis, and we render a new decision that the compensable injury of _____, includes the diagnosed acute exacerbation of degenerative arthritis/osteoarthritis.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA** 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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge