

APPEAL NO. 080012  
FILED MARCH 19, 2008

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing (CCH) was held on December 5, 2007. In (Docket No. 1), the hearing officer resolved the disputed issues by deciding that respondent 1 (claimant) did sustain a compensable repetitive trauma injury to his right lower extremity; that the appellant (carrier) is not relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer of a claimed repetitive trauma injury pursuant to Section 409.001; and that the date of injury pursuant to Section 408.007, the date the employee knew or should have known the disease may be related to the employment, is (date 1).

In (Docket No. 2), the hearing officer resolved the disputed issues by deciding that the claimant did not sustain a compensable repetitive trauma injury to his left lower extremity; that the carrier is relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer of a claimed injury pursuant to Section 409.001; and that the date of injury pursuant to Section 408.007, the date the employee knew or should have known the disease may be related to the employment, is (date 2).

The carrier appealed the hearing officer's decision in Docket No. 1, disputing the determinations of the claimant's timely notice to employer pursuant to Section 409.001 and that the claimant sustained a compensable repetitive trauma injury to his right lower extremity. The carrier did not appeal the date of injury found to be (date 1). However, in its appeal, the carrier stated that it "did not commence providing workers' compensation coverage to claimant's employer until October 15, 2006, and therefore, the hearing officer's determination of a (date 1) date of injury removes carrier from liability for this claim." The claimant responded, urging affirmance of the hearing officer's determinations. The appeal file does not contain a response from respondent 2 (subclaimant).

The carrier also appealed the hearing officer's decision in Docket No. 2, disputing the hearing officer's findings that the evidence was sufficient to establish a causal relationship between the claimant's exposure to various water conditions and the diagnosed right (in Docket No. 1) and left lower extremity infections and that the exposure to wet, damp, and dirty conditions aggravated the claimant's preexisting skin conditions and predisposition to skin irritations. The carrier also appealed the hearing officer's finding that the claimant did sustain an injury to his bilateral lower extremities in the course and scope of his employment as a result of repetitive and continuous exposure to various water conditions. The claimant did not respond to the carrier's appeal of the hearing officer's decision in Docket No. 2. The appeal file does not contain a response from the subclaimant. There is no appeal of the hearing officer's decision in Docket No. 2 that the claimant did not sustain a compensable repetitive trauma injury to his left lower extremity; that the carrier is relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer of a

claimed injury pursuant to Section 409.001; and that the date of injury pursuant to Section 408.007 is (date 2), and those determinations have become final under Section 410.169.

## DECISION

Affirmed in part and reversed and remanded in part.

### DOCKET NO. 2

The hearing officer's findings that the evidence was sufficient to establish a causal relationship between the claimant's exposure to various water conditions and the diagnosed left lower extremity infections and that the exposure to wet, damp, and dirty conditions aggravated the claimant's preexisting skin conditions and predisposition to skin irritations and that the claimant did sustain an injury to his left lower extremity in the course and scope of his employment as a result of repetitive and continuous exposure to various water conditions are supported by sufficient evidence and are affirmed. However, the claimant did not sustain a compensable injury in Docket No. 2 because of his failure to timely notify his employer of the injury pursuant to Section 409.001 and those determinations have not been appealed.

### DOCKET NO. 1

In its appeal, the carrier asserts that it did not provide workers' compensation for the employer on the date of injury found by the hearing officer. The carrier did not include evidence with its appeal to support its assertion. In Houston Gen. Ins. Co. v. Association Cas. Ins. Co., 977 S.W.2d 634 (Tex. App.-Tyler 1998, no writ), the court held that workers' compensation coverage may not be extended by waiver or estoppel. The parties did not stipulate as to coverage at the CCH. Texas Department of Insurance, Division of Workers' Compensation (Division) records reflect that the carrier did not begin to provide coverage for the employer until October 15, 2006. This case is similar to other cases where after the CCH information was presented that the carrier did not have coverage. See Appeals Panel Decision (APD) 042603, decided November 29, 2004; APD 050802, decided May 18, 2005. We remand the case in Docket No. 1 for the hearing officer to determine who the correct carrier is for the claimed repetitive trauma injury to the right leg in 2006 and, if it includes a carrier other than the carrier that was present at the CCH, to hold another hearing with all of the potential proper carriers present. On remand the hearing officer is to take official notice of the Division records regarding the proper carrier. The parties are to be allowed the opportunity to present evidence as to the correct carrier in this proceeding.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended

June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

The true corporate name of the insurance carrier is **AMCOMP ASSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701-3232.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge