

APPEAL NO. 080499  
FILED MAY 29, 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 (CCH) was held on March 14, 2008. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that the respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001;<sup>1</sup> and because the claimant did not sustain a compensable injury, the claimant did not have disability. The claimant appeals, disputing the injury, disability, and timely notice determinations. The carrier responded, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

**COMPENSABLE INJURY AND DISABILITY**

The hearing officer found that the claimant did not sustain damage or harm to the physical structure of his body including the lumbar spine during the course and scope of his employment on \_\_\_\_\_. The hearing officer's decision that the claimant did not sustain a compensable injury on \_\_\_\_\_, is supported by sufficient evidence and is affirmed. Therefore, the hearing officer's decision that because the claimant did not sustain a compensable injury, the claimant did not have disability resulting from an injury sustained on \_\_\_\_\_, is also affirmed.

**TIMELY NOTICE TO EMPLOYER**

Section 409.001(a) provides that, for injuries other than an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the injury occurs. Section 409.002 provides that failure to notify an employer as required by Section 409.001(a) relieves the employer and the employer's insurance carrier of liability unless: (1) the employer or carrier has actual knowledge of the employee's injury; (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) determines that good cause exists for failure to provide notice in a timely manner; or (3) the employer or the employer's insurance carrier does not contest the claim.

The claimant testified that he told his supervisor on May 23, 2007, that he sustained a work-related injury on \_\_\_\_\_. In evidence is an Employee's Claim for Compensation for a Work-Related Injury or Occupational Disease (DWC-41) which

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<sup>1</sup> We note the hearing officer mistakenly references Sections 409.022 and 409.021 in the issue, relevant conclusion of law and decision.

lists the date the injury was reported to the employer as May 23, 2007. The claimant's supervisor testified that the claimant did not report the injury until July 10, 2007. The employer's accident investigation report was completed on July 10, 2007, and a written statement from the supervisor was in evidence which stated he was not aware the claimant was alleging he was injured in the course and scope of his employment until July 10, 2007. The hearing officer found that "the claimant did not timely report the claimed injury until June 23, 2007, and good cause for failure to do so was not shown." The claimant contended in his appeal that "there was no mentioning of a June 23, 2007 reporting date." The carrier noted in its response that "the hearing officer incorrectly asserted the supervisor did not receive notice from the claimant of a work related injury until June 23, 2007." Conflicting evidence was presented at the CCH regarding the date the claimant notified his employer that he was alleging an injury in the course and scope of his employment. However, the conflicting dates of notice based on evidence presented at the CCH were May 23, 2007, which would have been timely notice, or July 10, 2007, which would not have been timely notice. The hearing officer's finding that the claimant did not timely report the claimed injury until June 23, 2007, is not supported by the evidence. We remand the timely notice issue back to the hearing officer for her to find a date of notice that is supported by the evidence.

### **SUMMARY**

We affirm the hearing officer's decision that the claimant did not sustain a compensable injury. We affirm the hearing officer's decision that because the claimant did not sustain a compensable injury, the claimant did not have disability resulting from the injury sustained on \_\_\_\_\_.

We reverse the hearing officer's determination that the carrier is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001 and remand the timely notice issue back to the hearing officer for further action consistent with this decision.

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. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **SUA INSURANCE 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.**

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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