

APPEAL NO. 080678  
FILED JUNE 25, 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 April 21, 2008. The issues before the hearing officer were:

- (1) Did the respondent (claimant) sustain a compensable injury on \_\_\_\_\_?
- (2) Has the appellant (carrier) waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021?
- (3) Is the carrier relieved from liability under Section 409.002, because of the claimant's failure to timely notify the employer pursuant to Section 409.001?
- (4) Did the claimant have disability, and if so, for what period?

The hearing officer decided that: (1) the claimant sustained a compensable injury on \_\_\_\_\_; (2) the carrier waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021; (3) the carrier is not relieved from liability under Section 409.002 because the claimant timely notified the employer pursuant to Section 409.001; and (4) the claimant had disability beginning on March 29, 2007, and continuing to the date of the CCH, April 21, 2008.

The carrier appealed the hearing officer's adverse determinations on compensability, disability, and carrier waiver. The claimant responded, urging affirmance. The determination on timely notice of an injury to the employer was not appealed and has become final pursuant to Section 410.169.

#### DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that on \_\_\_\_\_, she sustained an injury at work to her upper shoulder and neck that went down into her right arm and hand, causing numbness. It was undisputed that on April 16, 2007, the carrier first received written notice from the employer of the claimed \_\_\_\_\_, injury and that the carrier's adjuster established a claim with the Texas Department of Insurance, Division of Workers' Compensation (Division) with a date of injury of \_\_\_\_\_. It was further undisputed that on April 18, 2007, the adjuster recorded an interview with the claimant. While describing the incident of \_\_\_\_\_, the claimant told the adjuster that she had

previously suffered a fall at work on or about (prior date of injury), and that she did not know if her current problems were due to the 2006 fall. The adjuster then established a second claim (assigning a different claim number) with the Division with a date of injury of (prior date of injury).

### **COMPENSABILITY AND DISABILITY**

The hearing officer's decision that the claimant sustained a compensable injury on \_\_\_\_\_, and that the claimant had disability beginning on March 29, 2007, and continuing to the date of the CCH, April 21, 2008, is supported by sufficient evidence and is affirmed.

### **CARRIER WAIVER**

Section 409.021(a) 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 Division 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. 28 TEX. ADMIN. CODE § 124.2(f) (Rule 124.2(f)) provides that notification to the Division and to the claimant of a denial of a claim based on non-compensability or lack of coverage Rule 124.2(d) requires the carrier to use plain language notices with language and content prescribed by the Division. These notices shall provide a full and complete statement describing the carrier's action and its reason(s) for such action. The statement must contain sufficient claim-specific substantive information to enable the employee/legal beneficiary to understand the carrier's position or action taken on the claim.

It is undisputed that the carrier received first written notice of an injury on April 16, 2007, and that the 60th day after the first written notice is June 15, 2007. A Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) dated April 25, 2007, and filed with the Division on April 28, 2007, references in the "RE:" section the date of injury as (prior date of injury), with no "DWC #" (Division number); however, the body of the PLN-1 states that "[o]n 04/16/2007 we received notice that you [the claimant] reported an on the job injury" and the carrier denied the claim "in its entirety," stating its position:

[the claimant] did not sustain an injury in the course and scope of employment. [The claimant] did not suffer a compensable injury. [The claimant] was involved in an incident at work on or about (prior date of injury). The incident; however, did not result in damage or harm to the physical structure of the body. [The claimant] did not report to her employer within 30 days that she sustained any injuries as result of the incident on or about (prior date of injury). Furthermore, the carrier is

disputing an incident occurred on \_\_\_\_\_ when she said she injured her neck, and when her right and left hands went numb and injured her back between her shoulder blades. [The claimant] terminated her employment on 3/28/07 after being reprimanded by her employer. [The claimant] has never reported to her employer that she was injured on \_\_\_\_\_. [The claimant] did not sustain a repetitive trauma [duplicate language omitted] injury. She did not sustain a physical injury or damage or [harm] to the physical structure of the body as a result of repetitious, physically traumatic activities that occurred over time and [arose] out of and in the course and scope of her employment. Finally witness statements are not consistent with [the claimant's] statement. No one was aware that [the claimant] had an injury that she was relating to her work activities.

The hearing officer acknowledged the PLN-1 was a dispute of compensability of an (prior date of injury), injury. However, in her Background Information, the hearing officer states that the notice [PLN-1] did not state when the carrier received notice of the \_\_\_\_\_, injury, and it did not suffice as a PLN-1 on the \_\_\_\_\_, injury. She further notes that on March 31, 2008, the carrier filed another PLN-1 with the Division concerning the date of injury of \_\_\_\_\_. That PLN-1 was not timely because it was not filed by June 15, 2007, which was 60 days after the carrier received first written notice of the injury.

In Appeals Panel Decision (APD) 011090 and APD 011091, both decided July 2, 2001, there was a reported injury involving multiple upper extremities/hands/wrists/arms with a (date of injury for Appeal Nos. 011090 & 011091), date of injury. The carrier timely disputed the (date of injury for Appeal Nos. 011090 & 011091), injury. Subsequently, the claims involving the left and right upper extremities were divided into two separate claims and the claimant alleged an injury/occupational disease, affecting only the left hand and wrist, with an injury date of (date of injury for Appeal No. 011090). The carrier filed no additional dispute in response to the (date of injury for Appeal No. 011090), injury. The Appeals Panel reversed the hearing officer's determination that the carrier waived the right to contest compensability of the (date of injury for Appeal No. 011090), left upper extremity injury and held that the dispute filed by the carrier was intended to serve as a contest of the compensability of the claimed bilateral upper extremities injuries, which included a contest of compensability of the left upper extremity injury. The Appeals Panel stated that to require the carrier to dispute an injury, which it had previously disputed, simply because the initial claim had been divided into two claims and the claimant alleged a different date of injury for one of the claimed injuries, would represent an elevation of form over substance.

In the case before us, the hearing officer's decision that the carrier waived the right to contest compensability of the claimed \_\_\_\_\_, injury is based on the form of the filed PLN-1 rather than the substance of the PLN-1. It is apparent on its face that the PLN-1 dated April 25, 2007, and filed April 28, 2007, was intended to serve as the carrier's specific contest of any claimed injury on (prior date of injury), and on \_\_\_\_\_. The PLN-1 contained sufficient claim-specific information (including a full

and complete statement of the grounds for contesting compensability) to enable the claimant to understand the carrier's denial of the (prior date of injury), and \_\_\_\_\_, claims in their entirety. Consequently, we reverse the hearing officer's determination that the carrier waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021 and render a new decision that the carrier did not waive the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021.

### SUMMARY

We affirm the hearing officer's decision that the claimant sustained a compensable injury on \_\_\_\_\_, and that the claimant had disability beginning on March 29, 2007, and continuing to the date of the CCH, April 21, 2008. We reverse the hearing officer's decision that the carrier waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021 and render a new decision that the carrier has not waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723.**

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Cynthia A. Brown  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge