

APPEAL NO. 081235  
FILED OCTOBER 8, 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 July 17, 2008. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable repetitive trauma injury; (2) because the claimant did not sustain a compensable injury, the claimant does not have disability from August 3, 2007, through the date of the CCH; (3) (typographical error of DOI), is the date of injury (DOI) pursuant to Section 408.007, the date the employee knew or should have known the disease may be related to the employment; and (4) the respondent (self-insured) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer of the claimed injury pursuant to Section 409.001.

The claimant appealed the hearing officer's determinations on all four issues, contending, among other matters, that there is no evidence that the DOI is (typographical error of DOI), and the DOI should be (claimant's alleged date of injury). The self-insured responded, urging affirmance of the hearing officer's determinations except it contends that the (typographical error of DOI), DOI determination was a typographical error and that the actual DOI was \_\_\_\_\_, as evidenced by a report from Dr. B.

DECISION

Affirmed in part and reversed and rendered in part.

**COMPENSABLE INJURY, DISABILITY AND TIMELY NOTICE**

The hearing officer's determinations on the issues of a compensable repetitive trauma injury, disability and timely notice of a claimed injury to the employer are supported by sufficient evidence and are affirmed.

**DATE OF INJURY**

Section 408.007 provides that the DOI for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. In evidence is a report from Dr. B dated \_\_\_\_\_, regarding the claimant's injury, which for the first time diagnoses a "trigger finger." The hearing officer, in the Background Information of the decision writes:

The evidence was sufficient and established that the date the Claimant knew or should have known that a claimed injury may be related to his employment was on (typographical error of DOI). On (typographical error of DOI), the Claimant sought medical treatment and was diagnosed with trigger finger and given an injection.

Throughout the Background Information, Findings of Fact, Conclusions of Law and the Decision portion of the hearing officer's decision and order, the hearing officer refers to (typographical error of DOI), as the DOI. The only reference to a (typographical error of DOI), DOI is in the ombudsman's opening statement where she states that the self-insured was going to argue that the DOI should be (typographical error of DOI), apparently because that is stated as the self-insured's position on the DOI issue in the benefit review conference report. Contrary to the hearing officer's statement in the Background Information, there is no medical record dated (typographical error of DOI), which indicates the claimant sought or received medical treatment. Rather, the first medical record which diagnoses the claimant with trigger finger is Dr. B's report of \_\_\_\_\_. The self-insured contends, among other matters, that the DOI should be \_\_\_\_\_, the date that Dr. B first diagnosed a trigger finger. The hearing officer appears to have intended to find a \_\_\_\_\_, DOI; however, throughout the decision and order the hearing officer consistently listed the DOI as (typographical error of DOI). There is no evidence that (typographical error of DOI), is the DOI.

Accordingly, we reverse the hearing officer's determination that (typographical error of DOI), is the DOI pursuant to Section 408.007 as being against the great weight and preponderance of the evidence. We render a new decision that \_\_\_\_\_, is the DOI pursuant to Section 408.007, the date the claimant knew or should have known the disease may be related to the employment. The change in the DOI does not change the determination that the claimant did not timely notify his employer of the injury pursuant to Section 409.001.

### **SUMMARY**

We affirm the hearing officer's determinations on the issues of a compensable repetitive trauma injury, disability and timely notice of a claimed injury to the employer. We reverse the hearing officer's determination that (typographical error of DOI), is the DOI pursuant to Section 408.007 and render a new decision that \_\_\_\_\_, is the DOI pursuant to Section 408.007.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**EXECUTIVE DIRECTOR  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE)**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge