

APPEAL NO. 081761
FILED FEBRUARY 12, 2009

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 September 8, 2008, with the record closing on November 3, 2008. The issues before the hearing officer were:

1. Has the respondent/cross-appellant (self-insured) waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021?
2. Did the appellant/cross-respondent (claimant) sustain a compensable mental trauma injury on _____?

The hearing officer determined that: (1) the self-insured waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021; and (2) because of carrier waiver, the claimant sustained a compensable mental trauma injury on _____.

The self-insured appealed the hearing officer's compensable injury and carrier waiver determinations. The self-insured states that as a matter of law, the hearing officer erred by concluding that the self-insured waived its right to contest compensability of the mental trauma injury "because it did not prove the date it filed its [Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1)] with the [Texas Department of Insurance, Division of Workers' Compensation (Division)]." The claimant responded, urging affirmance.

The claimant cross-appealed the hearing officer's finding that the mental trauma injury is not compensable in conjunction with a legitimate personnel action. The claimant states that he disagrees that the mental trauma injury is compensable "solely due to waiver." The self-insured responded, contending that the hearing officer's finding that the claimant did not sustain a work-related mental trauma injury on _____, is supported by sufficient evidence.

At the September 8, 2008, CCH, the hearing officer took official notice of the Division's Dispute Resolution Information System (DRIS) notes.

DECISION

Reversed and rendered.

The claimant testified that he sustained a mental trauma injury on _____, when he was informed by his employer that he would be transferred to another department. The claimant sought medical care the next day, (day after date of injury), at the employer's medical clinic. In evidence is a medical report dated August 29, 2007,

from the employer's medical clinic which notes that the claimant was not alleging a work-related injury. That medical report notes that the claimant was upset because he was being transferred to another department and lists the claimant's problem as "[e]levated [b]lood pressure." The claimant was referred to, and seen by, Dr. T on August 29, 2007, and the claimant was treated for "acute stress reaction/[high blood pressure (HBP)]." In evidence is a letter dated November 12, 2007, from a marital/family therapist that states that the claimant's "diagnosis is Adjustment Disorder with Mixed Emotional Features."

At the CCH, the claimant argued that the self-insured waived the right to contest compensability of the claimed mental trauma injury. The claimant argued that the Employee's Notice of Injury or Occupational Disease and Claim for Compensation (DWC-41) was filed with the Division in September 2007. A DRIS note dated September 18, 2007, states "Rec'd DWC 41 on 09/14/2007 *Created on 09/18/2007." The claimant argued that based on a presumption of administrative regularity, the Division sent a letter to the self-insured in September of 2007, which gave notice of a claimed injury. Therefore, the self-insured received first written notice in September 2007, and the self-insured did not dispute compensability of the claimed injury prior to the expiration of the waiver period (in November 2007). At the CCH, the self-insured stated that it did not receive the written notice from the Division in September 2007, as alleged by the claimant. Rather, the self-insured stated that it received first written notice of the claimed injury on December 5, 2007. In evidence is an employer's internal document entitled "Workers Compensation-First Report Of Injury Or Illness" which states "Date Reported to Claims Administrator 12/05/2007." Also, in evidence is an affidavit dated May 23, 2008, from the employer's "Claims Supervisor" stating that the self-insured was "first notified on December 5, 2007 of this alleged on the job injury" and that the self-insured filed a notice of denial on December 19, 2007. In evidence is a PLN-1 dated December 19, 2007, which states that the self-insured received notice of the claimed injury on December 5, 2007, and that it was denying compensation. A DRIS note dated June 12, 2008, states that the PLN-1 was received by the Division on December 19, 2007.

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. In Appeals Panel Decision 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 hearing officer in the Background Information of her decision states that “the PLN 1 had no date stamp of when the Division received it. Since there was an injury, and because there was no proof of when the Division received the denial of compensation, [s]elf-insured would not have timely filed a dispute of the claim.” The hearing officer’s Finding of Fact No. 8 states:

8. Self-insured received notice of the claim on December 5, 2007 and filed a denial of compensation on December 19, 2007, but the dispute was not date stamped as to when it was received by the Division.

That portion of the hearing officer’s finding of fact that the “[s]elf-insured received notice of the claim on December 5, 2007 and filed a denial of compensation on December 19, 2007,” is supported by sufficient evidence. As previously mentioned, the hearing officer took official notice of the DRIS notes and a DRIS entry states that the PLN-1 was received on December 19, 2007. The evidence establishes that the self-insured denied compensability of the claimed injury on December 19, 2007, a date prior to the expiration of the waiver period. Accordingly, we reverse the hearing officer’s determination that the self-insured waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021, and we render a new decision that the self-insured did not waive the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021.

EXTENT OF INJURY

The hearing officer’s Findings of Fact Nos. 6 and 7 state that:

6. The action of the employer was a legitimate personnel action.
7. A psychological injury, mental trauma, is not compensable in conjunction with a legitimate personnel action.

These findings are supported by sufficient evidence. See Section 408.006(b).

The hearing officer determined that “[b]ecause of [carrier] waiver, [the] [c]laimant sustained a compensable mental trauma injury on _____.” Given that we have reversed the hearing officer’s carrier waiver determination and rendered a new decision that the self-insured did not waive the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021, we likewise reverse the hearing officer’s extent-of-injury determination.

Accordingly, we reverse the hearing officer’s determination that because of carrier waiver, the claimant sustained a compensable mental trauma injury on _____, and we render a new decision that the claimant did not sustain a compensable mental trauma injury on _____.

SUMMARY

We reverse the hearing officer's determination that the self-insured waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021, and we render a new decision that the self-insured did not waive the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021. We reverse the hearing officer's determination that because of carrier waiver, the claimant sustained a compensable mental trauma injury on _____, and we render a new decision that the claimant did not sustain a compensable mental trauma injury on _____.

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

**(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge