

APPEAL NO. 090154
FILED APRIL 9, 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 January 12, 2009. The issues before the hearing officer were:

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

The hearing officer determined that: (1) by operation of law, the claimant sustained a compensable injury on _____; (2) had the self-insured not waived the right to contest compensability, the self-insured would have been relieved of liability under Section 409.002 because the claimant failed to timely notify the employer pursuant to Section 409.001; (3) the claimant did not have disability; and (4) the self-insured waived the right to contest compensability of the claim and injury by not timely contesting the injury in accordance with Section 409.021.

The claimant appealed the hearing officer's timely notice and disability determinations. The claimant contends that the hearing officer determined that the claimant did not have disability only because she found that the claimant sustained damage or harm to the physical structure of her body at home, rather than at work, on _____. The claimant states that the hearing officer's compensable injury and disability determinations are inconsistent, because the hearing officer found that the claimant sustained a compensable injury on _____, by virtue of carrier waiver. However, she found no disability despite her Finding of Fact No. 5 that "[f]rom February 27, 2008 to the present, [c]laimant's inability to obtain and retain employment at wages equivalent to her wages prior to the date of the alleged injury is due to an injury she sustained at home on _____." The self-insured responded, urging affirmance of the hearing officer's disability determination.

The self-insured cross-appealed the hearing officer's determinations that were adverse to the self-insured. The claimant responded to the self-insured's appeal.

DECISION

Affirmed in part, affirmed as reformed in part, and reversed and rendered in part.

COMPENSABLE INJURY AND TIMELY NOTICE

The hearing officer's determinations on compensable injury and timely notice to the employer are supported by sufficient evidence and are affirmed.

CARRIER WAIVER

The hearing officer found that the self-insured waived the right to contest compensability. This finding is supported by sufficient evidence. We note that the carrier waiver issue in dispute incorrectly refers to "claim and injury" rather than "claimed injury." Accordingly, we affirm as reformed the hearing officer's carrier waiver determination to state 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."

DISABILITY

The hearing officer determined that because the self-insured waived the right to contest compensability of the claimed injury, the claimant sustained a compensable injury. However, the hearing officer determined that the claimant did not have disability because the injury occurred at home. There was conflicting evidence with regard to whether the claimant was injured at home or in the course and scope of employment.

The hearing officer's Finding of Fact No. 3 states that "[c]laimant sustained damage or harm to the physical structure of her body at home on _____." Also, the hearing officer's Finding of Fact No. 5 states that "[f]rom February 27, 2008 to the present, [c]laimant's inability to obtain and retain employment at wages equivalent to her wages prior to the date of the alleged injury is due to an injury she sustained at home on _____."

Even though the hearing officer was persuaded that the claimant sustained damage or harm to the physical structure of her body at home, the injury became compensable by virtue of carrier waiver. The hearing officer determined that the claimant had no disability because of her belief that the injury occurred at home. Section 401.011(16) provides that disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Given that the hearing officer determined that the claimant sustained a compensable injury, the hearing officer's determination that the claimant did not have disability because the injury occurred at home, rather than at work, is legally incorrect. Accordingly, we reverse the hearing officer's determination that the claimant did not have disability and we render a new decision that the claimant had disability, beginning on February 27, 2008, through the date of the CCH.

SUMMARY

We affirm the hearing officer's compensable injury and timely notice determinations. We affirm the hearing officer's carrier waiver determination, as reformed.

We reverse the hearing officer's disability determination and we render a new decision that the claimant had disability from February 27, 2008, through the date of the CCH.

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

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

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge