

APPEAL NO. 100130
FILED APRIL 1, 2010

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 12, 2010. The disputed issues before the hearing officer were:

- (1) What is the date of injury?
- (2) Did the appellant (claimant) sustain a compensable injury in the form of an occupational disease?
- (3) Is the respondent (carrier) relieved from liability under Section 409.002 because of the claimant's failure to notify his employer of an injury pursuant to Section 409.001?
- (4) Did the claimant have disability resulting from the claimed injury and, if so, for what period(s)?
- (5) Is the carrier liable for the payment of accrued benefits pursuant to 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3) resulting from its failure to dispute or initiate payment of benefits within 15 days of the date it received written notice of the injury?

The hearing officer determined that: (1) the date of injury for the alleged occupational disease is _____; (2) the claimant did not sustain a compensable injury in the form of an occupational disease; (3) the carrier is relieved from liability under Section 409.002 because of the claimant's failure to notify his employer of an injury pursuant to Section 409.001; (4) the claimant did not have disability resulting from the claimed injury; and (5) the carrier is liable for the payment of accrued benefits pursuant to Rule 124.3 resulting from its failure to dispute or initiate payment of benefits within 15 days of the date it received written notice of the injury.

The claimant appealed the hearing officer's determinations on the issues of date of injury, disability, and carrier liability pursuant to Rule 124.3. The carrier responded, urging affirmance. The hearing officer's determinations on the issues of compensable injury and timely notice were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part, reversed and rendered in part.

TIMELY NOTICE AND DISABILITY

The hearing officer's decision that the carrier is relieved from liability under Section 409.002 because of the claimant's failure to notify his employer of an injury pursuant to Section 409.001, and that the claimant did not have disability resulting from the claimed injury is supported by sufficient evidence and is affirmed.

RULE 124.3

The hearing officer found that the carrier received written notice of the claimed injury on June 19, 2009, and that the carrier neither initiated the payment of benefits nor disputed the compensability of the claimant's alleged occupational disease until July 10, 2009. The hearing officer's findings are supported by sufficient evidence.

That portion of the hearing officer's decision that the carrier is liable for the payment of accrued benefits pursuant to Rule 124.3 resulting from its failure to dispute or initiate payment of benefits within 15 days of the date it received written notice of the injury is supported by sufficient evidence and is affirmed. However, the hearing officer also decided that:

Medical benefits would have been payable from _____, through July 10, 2009, had the alleged occupational disease been compensable and those benefits are accrued benefits for the purposes of Rule 124.3, but there would have been no income benefits payable during that time and there are no accrued income benefits for the purposes of Rule 124.3.

That portion of the hearing officer's decision is legally incorrect.

Rule 124.3(a)(2) provides that if the carrier files a notice of denial after the 15th day but on or before the 60th day after receipt of written notice of the injury: (A) the insurance carrier is liable for and shall pay all income benefits that had accrued and were payable prior to the date the carrier filed the notice of denial and only then is it permitted to suspend payment of benefits, and (B) the insurance carrier is liable for and shall pay for all medical services, in accordance with the Act and rules, provided prior to the filing of the notice of denial. In Appeals Panel Decision (APD) 002220-s, decided November 7, 2000, the Appeals Panel held that in accordance with Rule 124.3(a)(2), the carrier is liable for the benefits that accrued "without regard to the ultimate determination of the compensability of the injury." See *also* APD 012101-s, decided October 22, 2001. In APD 021558, decided August 7, 2002, the Appeals Panel cited APD 012101-s and stated that if a carrier's notice of denial is filed between 7 and 60 days after receipt of written notice of injury, the carrier "is liable for and shall pay all benefits that had accrued and were payable prior to the date the carrier filed the notice of denial."¹ Further, in that case the Appeals Panel stated that the holding of APD

¹ We note that Rule 124.3(a)(1) and (2) were amended to change the time for carriers to contest compensability of a claim or begin benefit payments from the 7-day period to 15 days in accordance with the revised Section 409.021(c). See 29 TexReg 2322. Also, Rule 124.3(f) provides in part, the 15-day

012101-s was that a carrier is liable for benefits under Rule 124.3(a) as of the date of injury.

In this instant case, the carrier filed a notice of denial between the 15th and 60th day after receipt of written notice of the injury. Pursuant to Rule 124.3, the carrier is liable for the payment of accrued benefits. Accordingly, we reverse and render a new decision by striking that portion of the hearing officer's decision and order that states:

Medical benefits would have been payable from _____, through July 10, 2009, had the alleged occupational disease been compensable and those benefits are accrued benefits for the purposes of Rule 124.3, but there would have been no income benefits payable during that time and there are no accrued income benefits for the purposes of Rule 124.3.

SUMMARY

We affirm the hearing officer's decision that the carrier is relieved from liability under Section 409.002 because of the claimant's failure to notify his employer of an injury pursuant to Section 409.001. We affirm the hearing officer's decision that the claimant did not have disability resulting from the claimed injury. We affirm that portion of the hearing officer's decision that the carrier is liable for the payment of accrued benefits pursuant to Rule 124.3 resulting from its failure to dispute or initiate payment of benefits within 15 days of the date it received written notice of the injury.

We reverse and render a new decision by striking that portion of the hearing officer's decision and order that states:

Medical benefits would have been payable from _____, through July 10, 2009, had the alleged occupational disease been compensable and those benefits are accrued benefits for the purposes of Rule 124.3, but there would have been no income benefits payable during that time and there are no accrued income benefits for the purposes of Rule 124.3.

time frame applies to a claim for benefits based on a compensable injury occurring on or after September 1, 2003.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3232.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge