

APPEAL NO. 101227
FILED NOVEMBER 5, 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 (CCH) was held on July 22, 2010. The hearing officer resolved the disputed issues by deciding that the appellant (self-insured) was the decedent's employer for purposes of the 1989 Act at the time of the claimed injury and 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.

The self-insured appealed, disputing the hearing officer's determinations that it was the decedent's employer for purposes of the 1989 Act at the time of the claimed injury and that the self-insured waived its right to contest compensability of the claimed injury. Respondent 1 (carrier) responded, urging affirmance. The appeal file does not contain a response from respondent 2, the subsequent injury fund.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the decedent died on _____, as a result of injuries that he suffered from multiple gunshot wounds on (date of injury). At issue was the identity of the decedent's employer for purposes of the 1989 Act and whether the self-insured waived its right to contest compensability of the claimed injury. No one alleging to have the status of a claimant beneficiary appeared at the CCH.

The hearing officer's determination that the self-insured was the decedent's employer for purposes of the 1989 Act at the time of the claimed injury is supported by sufficient evidence and is affirmed.

WAIVER OF THE SELF-INSURED

Section 409.021 provides that for claims based on a compensable injury that occurred on or after September 1, 2003, that no 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 Texas Department of Insurance, Division of Workers' Compensation (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. For a claim for workers' compensation benefits based on a compensable injury that occurs on or after September 1, 2003, Section 409.021(f)(2) provides that a political subdivision that self-insures under Section 504.011, either individually or through an interlocal agreement with other political

subdivisions, receives notice on the date the intergovernmental risk pool or other entity responsible for administering the claim for the political subdivision receives notice.

Section 504.002(d) provides that “written notice” to a political subdivision that self-insures, either individually or collectively through an interlocal agreement as described by Section 504.011, occurs only on written notice to the intergovernmental risk pool or other entity responsible for administering the claim. Section 504.011 provides that a political subdivision shall extend workers’ compensation benefits to its employees by: (1) becoming a self-insurer; (2) providing insurance under a workers’ compensation insurance policy; or (3) entering into an interlocal agreement with other political subdivisions providing for self-insurance. See *also* 28 TEX. ADMIN. CODE § 124.1(c) (Rule 124.1(c)).

In evidence is a Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) dated March 28, 2008, that lists the self-insured’s third party administrator as AS&G Claims Administration. The PLN-1 states that “[o]n 01/29/08, we received notice that [decedent] sustained an on the job injury. We are denying [decedent’s] claim for workers’ compensation benefits.” The PLN-1 stated grounds for the refusal. The carrier’s interrogatories to the self-insured were in evidence. In the interrogatories, the self-insured identified Nova Pro Risk Solutions as the intergovernmental risk pool or other entity responsible for administering the claims of the self-insured on or about January 6, 2008. Additionally, the interrogatories stated Nova Pro Risk Solutions received the Employer’s First Report of Injury or Illness (DWC-1) on January 29, 2008 (Nova Pro date stamped).

When a party asserts that the carrier has waived the right to contest compensability, that party has the burden to prove when the carrier received the first written notice of injury and once that is done, the burden shifts to the carrier to prove that it timely filed a dispute. Appeals Panel Decision 051656, decided September 14, 2005. In this case, the hearing officer failed to make a finding as to the date the intergovernmental risk pool or other entity responsible for administering the claim received first written notice of the claimed injury. However, the hearing officer found that the self-insured received written notice of the claimed injury on (date of injury), and filed a PLN-1 with the Division, disputing the claimed injury on March 28, 2008. The hearing officer determined 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. The hearing officer based his determination of the receipt of the first written notice of the self-insured on various documents dated (date of injury), that indicated the decedent was an employee at the time of the incident, and was involved in a shooting in (County Name). However, there was no indication that the intergovernmental risk pool or other entity responsible for administering the claim for the self-insured received those documents on that date.

No testimony was offered at the CCH, nor was documentary evidence provided (other than the interrogatories and PLN-1) to establish the date the intergovernmental risk pool or other entity responsible for administering the claim received first written

notice of the claimed injury. The interrogatories and the PLN-1 state that the entity responsible for administering the claim for the self-insured received first written notice on January 29, 2008. We hold the hearing officer's determination that the self-insured had first written notice of the injury on (date of injury), is not supported by the evidence. The party asserting that the self-insured waived the right to contest compensability failed to meet its burden of proof to establish the date that the self-insured, through the intergovernmental risk pool or other entity responsible for administering the claim for the self-insured, received the first written notice of an injury.

The only evidence of when the intergovernmental risk pool or other entity responsible for administering the claim for the self-insured received first written notice was the interrogatories and PLN-1 indicating the entity responsible for administering the claim for the self-insured received written notice on January 29, 2008, which would make the self-insured's dispute of compensability filed on March 28, 2008, timely.

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 render a new decision that the self-insured did not waive the right to contest compensability of the claimed injury by timely contesting the injury in accordance with Section 409.021.

SUMMARY

We affirm the hearing officer's determination that the self-insured was the decedent's employer for purposes of the 1989 Act at the time of the claimed injury.

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 render a new decision that the self-insured did not waive the right to contest compensability of the claimed injury by timely contesting the injury in accordance with Section 409.021.

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

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

The true corporate name of the insurance carrier is **HARTFORD CASUALTY 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 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge