

APPEAL NO. 121249
FILED SEPTEMBER 27, 2012

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 May 15, 2012, with the record closing on May 31, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) respondent 1 (claimant) did not sustain a compensable injury on [date of injury]; and (2) the appellant (self-insured) is not relieved from liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation with the Texas Department of Insurance, Division of Workers' Compensation (Division) within one year of the injury as required by Section 409.003. The self-insured appeals the hearing officer's determination that the self-insured is not relieved from liability because of the claimant's failure to timely file a claim for compensation. The appeal file does not contain a response from either the claimant or respondent 2 (subclaimant). The hearing officer's determination that the claimant did not sustain a compensable injury on [date of injury], was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

No testimony was presented at the CCH. The only documents in evidence were the hearing officer exhibits: (1) the Benefit Review Conference Report; (2) the carrier information sheet; and (3) a letter from the subclaimant requesting to be excused from appearance at the CCH and a single exhibit from the self-insured: a Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1).

Section 409.003 provides that an employee or person acting on the employee's behalf shall file with the Division a claim for compensation for an injury not later than one year after the date on which the injury occurred; or if the injury is an occupational disease, not later than one year after the date on which the employee knew or should have known that the disease was related to the employee's employment.

Section 409.004 provides, in part, that failure to file a claim for compensation with the Division as required under Section 409.003 relieves the employer and the carrier of liability unless: (1) good cause exists for failure to file a claim in a timely manner; or (2) the employer or the employer's insurance carrier does not contest the claim.

The claimant had the burden to prove that he filed his claim of injury within one year of the date of his injury pursuant to Section 409.003, or had good cause for not

timely filing. See Appeals Panel Decision (APD) 041233, decided June 29, 2004; and APD 040855, decided May 24, 2004.

There was no evidence in the record that the claimant ever filed a claim for compensation and therefore no evidence that the claimant timely filed a claim for compensation pursuant to Section 409.003. Accordingly, the hearing officer's determination that the self-insured is not relieved from liability under Section 409.004 because of claimant's failure to timely file a claim for compensation with the Division within one year of the injury as required by Section 409.003 is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

We reverse the hearing officer's determination that the self-insured is not relieved from liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation with the Division within one year as required by Section 409.003 and render a new decision that the self-insured is relieved from liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation with the Division within one year as required by Section 409.003.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (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:

**JONATHAN D. BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**JONATHAN D. BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge