

APPEAL NO. 122649
FILED FEBRUARY 22, 2013

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 November 21, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the four disputed issues before him, the hearing officer determined that: (1) the respondent/cross-appellant's (carrier) defense of compensability is limited to the "carrier denies that an injury arose out of the course and scope of employment with a Hartford insured" defense listed on the first Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) that was filed with the Texas Department of Insurance, Division of Workers' Compensation (Division) on July 3, 2012; (2) the appellant/cross-respondent (claimant) sustained a compensable injury on [date of injury]; (3) the claimant, who was injured in Indiana, is entitled to all the rights and remedies under the 1989 Act; and (4) the claimant did not have disability beginning April 25, 2012, and continuing through the date of the hearing.

The claimant appealed the hearing officer's determination that he did not have disability beginning April 25, 2012, and continuing through the date of the hearing. The carrier responded to the claimant's appeal, urging affirmance for the disability determination.

The carrier appealed the hearing officer's determinations that the carrier's defense of compensability is limited to the "carrier denies that an injury arose out of the course and scope of employment with a Hartford insured" defense listed on the first PLN-1 that was filed with the Division on July 3, 2012; the claimant sustained a compensable injury on [date of injury]; and the claimant, who was injured in Indiana, is entitled to all the rights and remedies under the 1989 Act. The claimant responded to the carrier's appeal, urging affirmance for the issues on which he prevailed.

DECISION

Affirmed in part and reversed and remanded in part.

**COMPENSABLE INJURY, CLAIMANT'S ENTITLEMENT UNDER THE 1989 ACT
AND DISABILITY**

The hearing officer's determinations that the claimant sustained a compensable injury on [date of injury]; the claimant, who was injured in Indiana, is entitled to all the rights and remedies under the 1989 Act; and the claimant did not have disability beginning April 25, 2012, and continuing through the date of the hearing are all

supported by sufficient evidence and are affirmed. We note that the hearing officer's determinations were made independent of his determination that the carrier's defense of compensability is limited to the defense listed on the PLN-1 filed July 3, 2012.

CARRIER'S DEFENSE OF COMPENSABILITY

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 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.

Section 409.022(a) provides that an insurance carrier's notice of refusal to pay benefits under Section 409.021 must specify the grounds for refusal and pursuant to Section 409.022(b) the grounds for the refusal specified in the notice constitute the only basis for the insurance carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence that could not reasonably have been discovered at an earlier date.

In the Background Information section of his decision the hearing officer noted that the claimant filed his first report of injury on April 17, 2012, and that the carrier did not file a PLN-1 disputing the claim until July 3, 2012. The hearing officer also noted that the carrier's first PLN-1 filed on July 3, 2012, asserted the defense that an injury did not occur in the course and scope of employment. The hearing officer, in Finding of Fact No. 7, found that the claimant filed a first report of injury on April 17, 2012, and determined that the carrier's defense of compensability is limited to the "carrier denies that an injury arose out of the course and scope of employment with a Hartford insured" defense listed on the first PLN-1 that was filed with the Division on July 3, 2012.

While it may be true that the claimant filed a report of injury on April 17, 2012, the hearing officer made no findings regarding when the carrier received the first written report of injury, which is required under Section 409.021. Pursuant to Section 409.021, the carrier has 60 days from the date on which it is notified of the injury to contest the compensability of an injury. Without a date certain on which the carrier received written notice of the claimant's injury, it cannot be determined when the 60-day period the carrier had to dispute the claim begins. Further, there was evidence of dates in addition to the April 17, 2012, date found by the hearing officer. Therefore, we remand the issue of whether the carrier's defense of compensability is limited to the "carrier denies that an injury arose out of the course and scope of employment with a Hartford insured"

defense listed on the first PLN-1 that was filed with the Division on July 3, 2012, to make a finding of fact regarding when the carrier first received written notice of the injury based on the evidence, and to make further findings of fact, conclusions of law, and a decision on the carrier's defense of compensability issue consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the claimant sustained a compensable injury on [date of injury].

We affirm the hearing officer's determination that the claimant, who was injured in Indiana, is entitled to all the rights and remedies under the 1989 Act.

We affirm the hearing officer's determination that the claimant did not have disability beginning April 25, 2012, and continuing through the date of the hearing.

We reverse the hearing officer's determination that the carrier's defense of compensability is limited to the "carrier denies that an injury arose out of the course and scope of employment with a Hartford insured" defense listed on the first PLN-1 that was filed with the Division on July 3, 2012. We remand this issue to the hearing officer to make a finding of fact regarding when the carrier first received written notice of the injury based on the evidence, and to make further findings of fact, conclusions of law, and a decision on the carrier's defense of compensability issue consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS 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.**

Carisa Space-Beam

Appeals Judge

CONCUR:

Thomas A. Knapp

Appeals Judge

Margaret L. Turner

Appeals Judge