

APPEAL NO. 131890  
FILED OCTOBER 7, 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 June 12, 2013, with the record closing on June 24, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) per the parties' stipulation, the date of injury, if any, is [date of injury]; (2) the appellant (claimant) did not sustain a compensable injury on [date of injury], while in the course and scope of his employment with respondent (self-insured); (3) since the claimant did not sustain a compensable injury on [date of injury], he had no disability; (4) the self-insured did not waive its right to contest compensability of the claimed [date of injury], injury; and (5) the self-insured did not fail to dispute or initiate payment of benefits within 15 days of the date it received written notice of the injury claimed herein.

The claimant appealed, disputing the hearing officer's determinations that: (1) the claimant did not sustain a compensable injury on [date of injury]; (2) the claimant did not have disability; (3) the self-insured did not waive its right to contest compensability of the claimed [date of injury], injury; and (4) the self-insured did not fail to dispute or initiate payment of benefits within 15 days of the date it received written notice of the injury claimed herein. The claimant argues that the self-insured failed to comply with the requirements of 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3). The self-insured responded, urging affirmance of the disputed determinations.

The hearing officer's determination that per the parties' stipulation, the date of injury, if any, is [date of injury], was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated in part that: (1) the date of injury, if any, is [date of injury]; (2) the self-insured received its first written notice of the claimed injury on September 27, 2011; (3) the self-insured filed its Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) with the Texas Department of Insurance, Division of Workers' Compensation (Division) on November 23, 2011; and (4) the self-insured's 60-day window to timely contest compensability in this claim expired on November 28, 2011. The claimant testified that he injured his low back when he lost his footing while going down some stairs while carrying a pump.

## COMPENSABLE INJURY

The hearing officer's determination that the claimant did not sustain a compensable injury on [date of injury], while in the course and scope of his employment is supported by sufficient evidence and is affirmed.

## DISABILITY

The hearing officer's determination that since the claimant did not sustain a compensable injury on [date of injury], he had no disability is supported by sufficient evidence and is affirmed.

## WAIVER PURSUANT TO SECTION 409.021

The hearing officer's determination that the self-insured did not waive its right to contest compensability of the claimed [date of injury], injury is supported by sufficient evidence and is affirmed.

## RULE 124.3

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, 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 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.

The self-insured contends in its response that "[a]s of the date the 15-day period expired in this case (October 12, 2011), [the] [c]laimant had not missed a single day of work **due to his alleged injury** [emphasis added] and had not sought medical treatment for his alleged injury."

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."<sup>1</sup> In APD 021558, decided August 7, 2002, the Appeals Panel cited APD 012101-s, decided, October 22, 2001, and stated that if a carrier's notice of denial is

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<sup>1</sup> 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 a 7-day period to 15 days in accordance with revised Section 409.021. See 29 TexReg 2322. Additionally, Rule 124.3(f) provides in part, the 15-day time frame applies to a claim for benefits based on a compensable injury occurring on or after September 1, 2003.

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.” Further, in that case the Appeals Panel stated that the holding of APD 012101-s was that a carrier is liable for benefits under Rule 124.3(a) as of the date of injury.

As previously noted, the parties stipulated that the self-insured received its first written notice of the claimed injury on September 27, 2011, and the self-insured filed its PLN-1 with the Division on November 23, 2011. Therefore, it is undisputed that the self-insured filed a notice of denial after the 15th day but before the 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 the hearing officer’s determination that the self-insured did not fail to dispute or initiate payment of benefits within 15 days of the date it received written notice of the injury claimed herein and render a new determination that the self-insured is liable for the payment of accrued benefits pursuant to Rule 124.3. We reverse the hearing officer’s order that the self-insured is not liable for compensation and render a new order that the self-insured is ordered to pay benefits in accordance with this decision, the 1989 Act, and the Commissioner’s Rules.

### **SUMMARY**

We affirm the hearing officer’s determination that the claimant did not sustain a compensable injury on [date of injury], while in the course and scope of his employment.

We affirm the hearing officer’s determination that since the claimant did not sustain a compensable injury on [date of injury], he had no disability.

We affirm the hearing officer’s determination that the self-insured did not waive its right to contest compensability of the claimed [date of injury], injury.

We reverse the hearing officer’s determination that the self-insured did not fail to dispute or initiate payment of benefits within 15 days of the date it received written notice of the injury claimed herein and render a new determination that the self-insured is liable for the payment of accrued benefits pursuant to Rule 124.3. We reverse the hearing officer’s order that the self-insured is not liable for compensation and render a new order that the self-insured is ordered to pay benefits in accordance with this decision, the 1989 Act, and the Commissioner’s Rules.

The true corporate name of the insurance carrier is **(a governmental entity self-insured through T.A.S.B. Risk Management Fund)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT  
[ADDRESS]  
[CITY], TEXAS [ZIP CODE].**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge