

APPEAL NO. 142477  
FILED JANUARY 26, 2015

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 October 14, 2014, in Houston, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) sustained a compensable injury on [Date of Injury]; (2) the date of the compensable injury is [Date of Injury]; (3) the appellant (carrier) is not relieved from liability under Section 409.002 because the claimant timely notified his employer pursuant to Section 409.001; (4) the carrier waived the right to contest compensability of the claimed injury because it failed to timely contest the injury in accordance with Sections 409.021 and 409.022; and (5) the claimant had disability resulting from the compensable injury of [Date of Injury], during the period beginning April 1, 2014, and continuing through the date of the CCH. The carrier appeals the hearing officer's determinations regarding the date of the injury, timely notice to the employer, whether the carrier waived compensability of the injury, and disability. The carrier contends that the claimant did not file a report with the employer until March 12, 2014, indicating that the injury did not occur until that time or alternatively, that the claimant did not timely report it. The carrier further contends that the Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) dated June 24, 2014, was timely, and therefore, the carrier did not waive compensability of the claim. The appeal file does not contain a response from the claimant. The hearing officer's determination that the claimant sustained a compensable injury on [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 claimant testified that he was injured on [Date of Injury], when he was pulling on a rope that was attached to a heavy load of materials being moved by a forklift. The claimant testified that he heard popping in his arm, and he informed his general foreman and the superintendent the same day.

**DATE OF INJURY, TIMELY NOTICE TO THE EMPLOYER, AND DISABILITY**

The hearing officer's determinations that: (1) the date of the compensable injury is [Date of Injury]; (2) the carrier is not relieved from liability under Section 409.002 because the claimant timely notified his employer pursuant to Section 409.001; and (3)

the claimant had disability resulting from the compensable injury of [Date of Injury], during the period beginning April 1, 2014, and continuing through the date of the CCH are supported by sufficient evidence and are affirmed.

### **CARRIER WAIVER**

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.

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.

The hearing officer determined that the carrier waived compensability of the injury because it failed to timely contest the injury in accordance with Sections 409.021 and 409.022. In Finding of Fact No. 6, the hearing officer found in part that the carrier received written notice of the injury on April 25, 2014. That portion of the hearing officer's finding is supported by sufficient evidence. In the Discussion portion of her decision, the hearing officer states:

The 60th day following April 25, 2014, is June 23, 2014. Also in evidence is a [PLN-1] dated June 24, 2014, which contains a Division date stamp of June 24, 2014. This [PLN-1] is disputing the compensability of a [Date of Injury], date-of-injury claim. Accordingly, [the] [c]arrier needed to file its dispute on or before June 23, 2014, to be timely and it did not meet this deadline.

However, the 60th day following April 25, 2014, is not June 23, 2014, as indicated by the hearing officer, but June 24, 2014. As the carrier filed a PLN-1 disputing the injury of [Date of Injury], on June 24, 2014, the carrier did not fail to timely contest the injury. Accordingly, we reverse the hearing officer's determination that the carrier waived the right to contest compensability of the claimed injury because it failed to timely contest the injury in accordance with Sections 409.021 and 409.022, and we

render a new determination that the carrier did not waive the right to contest compensability of the claimed injury because it did not fail to timely contest the injury in accordance with Sections 409.021 and 409.022.

### **SUMMARY**

We affirm the hearing officer's determinations that: (1) the date of the compensable injury is [Date of Injury]; (2) the carrier is not relieved from liability under Section 409.002 because the claimant timely notified his employer pursuant to Section 409.001; and (3) the claimant had disability resulting from the compensable injury of [Date of Injury], during the period beginning April 1, 2014, and continuing through the date of the CCH.

We reverse the hearing officer's determination that the carrier waived the right to contest compensability of the claimed injury because it failed to timely contest the injury in accordance with Sections 409.021 and 409.022, and we render a new determination that the carrier did not waive the right to contest compensability of the claimed injury because it did not fail to timely contest the injury in accordance with Sections 409.021 and 409.022.

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

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge