

APPEAL NO. 160249

FILED APRIL 4, 2016

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 January 14, 2016, in Dallas, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (carrier) waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021; (2) the respondent (claimant) sustained a compensable injury on (date of injury), through carrier waiver; and (3) the claimant had disability, resulting from the compensable injury, from May 9, 2015, through January 4, 2016, but not thereafter through the date of the CCH.

The carrier appealed the hearing officer's determinations, contending the evidence does not establish that the claimant sustained a compensable injury or had any disability. The carrier also contended that the hearing officer's decision "contains a clearly erroneous statement with respect to the time periods between the date the carrier received the notice of injury and the date the carrier filed its [Notice of Disputed Issue[s] and Refusal to Pay Benefits (PLN-11)] on August 3, 2015." The claimant responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed.

The claimant testified that he was injured on (date of injury), as a result of installing heavy pipe. Medical records in evidence establish that the claimant was diagnosed with a right inguinal hernia, and that the claimant underwent surgery to repair the hernia on October 29, 2015.

It is undisputed that the carrier received notice of the claimed injury on May 15, 2015. We note that the 60th day after May 15, 2015, is July 14, 2015. It is also undisputed that the carrier filed a PLN-11 on July 8, 2015, in which the carrier noted that "[t]he claimant[']s injury did not arise [out] of or in the course and scope of employment for the employer; therefore . . . the carrier denies that the claimant has a work related injury and denies compensability." The hearing officer found in an unappealed finding of fact that the carrier denied compensability of the claimed injury in the July 8, 2015, PLN-11. It is also undisputed that the carrier filed another PLN-11 on August 3, 2015, stating that the "[c]arrier [is] no longer disputing . . . compensability as of [July 8, 2015]."

The hearing officer, citing Appeals Panel Decision (APD) 982975, decided February 3, 1999, determined that the carrier waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021. We agree. In APD 982975, the carrier first received written notice of injury on May 20, 1998, and on May 26, 1998, filed a Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) contesting compensability. The carrier then filed another TWCC-21 on August 25, 1998, which was after the 60-day period, accepting liability. The Appeals Panel stated that “[b]y accepting liability, the carrier effectively withdrew its prior dispute,” citing APD 970713, decided June 4, 1997. The Appeals Panel “[rejected] the carrier’s contention that its first TWCC-21 forever preserved a ‘timely’ dispute for the purposes of Section 409.021(c), especially in light of [the] carrier’s later acceptance of the claim.”

In the case on appeal the carrier contested compensability of the claimed injury in the July 8, 2015, PLN-11, which was within the 60-day period. However, just as in APD 982975, *supra*, the carrier then filed a PLN-11 accepting the claim. We hold in this case, as we did in APD 982975, that by accepting liability in the PLN-11 filed on August 3, 2015, the carrier effectively withdrew its prior July 8, 2015, dispute. As noted above, the 60-day period in this case was May 15 through July 14, 2015. There is no other PLN in evidence from the carrier denying compensability within the 60-day period. Accordingly, we affirm the hearing officer’s determination that the carrier waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021.

Because we have affirmed the hearing officer’s carrier waiver determination, we also affirm the hearing officer’s determination that the claimant sustained a compensable injury on (date of injury), through carrier waiver. The hearing officer’s determination that the claimant had disability from May 9, 2015, through January 4, 2016, but not thereafter through the date of the CCH is supported by sufficient evidence and is affirmed.

We note that the hearing officer’s decision contains a misstatement of fact that requires clarification. In the Discussion portion of the decision, the hearing officer stated that “[o]n August 3, 2015, still within the 60 day period following May 15, 2015, [the] [c]arrier filed a PLN-11 that stated: “[the] [c]arrier is no longer disputing extent of injury or compensability as of [July 8, 2015].” As noted above, the 60-day period in this case is May 15 through July 14, 2015. It is clear from the remainder of the hearing officer’s discussion that he was aware of the correct 60-day period, and that he inadvertently stated August 3, 2015, was within that 60-day period.

The true corporate name of the insurance carrier is **ILLINOIS NATIONAL 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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge