

APPEAL NO. 160634
FILED MAY 24, 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 March 9, 2016, in El Paso, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) did not sustain a compensable injury, in the form of an occupational disease, with a date of injury of (date of injury); (2) the respondent (self-insured) is relieved from liability under Section 409.002 because the claimant failed to timely notify her employer pursuant to Section 409.001; and (3) because the claimant did not sustain a compensable injury, the claimant does not have disability from August 9 through September 30, 2015; and again from November 3, 2015, and continuing through the CCH.

The claimant appealed, disputing the hearing officer's determination of compensability, disability, and timely notice to the employer. The claimant argues that the evidence presented at the CCH establishes that she sustained a compensable injury, in the form of an occupational disease and had disability for the claimed time periods. The claimant additionally argues that the evidence establishes that she timely reported an injury to her employer. The self-insured responded, urging affirmance of the disputed compensability, disability, and timely notice determinations.

DECISION

Affirmed in part, reformed in part, and reversed and rendered in part.

The claimant testified that she was exposed to and contracted an occupational disease known as *Clostridium difficile* (C.diff) in the course and scope of her employment as a nurse's assistant. We note that the hearing officer incorrectly stated in Finding of Fact No. 1.A. that the parties stipulated that venue is proper in the Houston West Field Office of the Texas Department of Insurance, Division of Workers' Compensation. A review of the record reflects that the parties stipulated that venue is proper in the El Paso Field Office of the Texas Department of Insurance, Division of Workers' Compensation. We reform Finding of Fact No. 1.A. to conform to the actual stipulation made by the parties at the CCH: venue is proper in the El Paso Field Office of the Texas Department of Insurance, Division of Workers' Compensation.

COMPENSABLE INJURY

The hearing officer's determination that the claimant did not sustain a compensable injury, in the form of an occupational disease, with a date of injury of (date of injury), is supported by sufficient evidence and is affirmed.

DISABILITY

The hearing officer's determination that because the claimant did not sustain a compensable injury, the claimant does not have disability from August 9 through September 30, 2015; and again from November 3, 2015, and continuing through the CCH is supported by sufficient evidence and is affirmed.

TIMELY REPORTING

The hearing officer found that on (date of injury), the claimant had been diagnosed with C.diff or ulcerative colitis. The hearing officer further found that the employer became aware of a claimed work-related injury on August 31, 2015. These findings are supported by sufficient evidence.

Section 409.001(a) provides that, if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. The hearing officer determined that the claimant did not timely report her work injury to the employer because August 31, 2015, is more than 30 days from the claimed injury and that because the claimant did not timely report her injury, the self-insured is relieved of liability under Section 409.002. We conclude that the hearing officer erred in determining that the claimant did not timely report her injury because the 30th day after (date of injury), was Sunday, August 30, 2015, and the claimant gave notice on the next day, Monday, August 31, 2015. During the time period under consideration, 28 TEX. ADMIN. CODE § 102.3(a)(3) (Rule 102.3(a)(3)) provided that, if the last day of any period is not a working day, the period is extended to include the next day that is a working day. A working day is defined in Rule 102.3(b). In Appeals Panel Decision (APD) 950658, decided June 12, 1995, the Appeals Panel, citing Sections 3.11.014(a) and (b) of the Code Construction Act and Rule 102.3(a), held that where the 30th day after the date of injury was a Sunday, notice of injury was timely when given on the next working day, a Monday. See *also* APD 002549, decided December 11, 2000. Accordingly, we reverse the hearing officer's determination that the self-insured is relieved from liability under Section 409.002 because the claimant failed to timely notify her employer pursuant to Section 409.001 and render a new decision that the self-insured is not relieved from liability under Section 409.002 because the claimant timely notified her employer pursuant to Section 409.001.

SUMMARY

We affirm the hearing officer's determination that the claimant did not sustain a compensable injury, in the form of an occupational disease, with a date of injury of (date of injury).

We affirm the hearing officer's determination that because the claimant did not sustain a compensable injury, the claimant does not have disability from August 9 through September 30, 2015; and again from November 3, 2015, and continuing through the CCH.

We reform Finding of Fact No. 1.A. as follows: venue is proper in the El Paso Field Office of the Texas Department of Insurance, Division of Workers' Compensation.

We reverse the hearing officer's determination that the self-insured is relieved from liability under Section 409.002 because the claimant failed to timely notify her employer pursuant to Section 409.001 and render a new decision that the self-insured is not relieved from liability under Section 409.002 because the claimant timely notified her employer pursuant to Section 409.001.

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:

**STEPHEN S. VOLLBRECHT, 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:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge