

APPEAL NO. 161343  
FILED SEPTEMBER 8, 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 was held on May 31, 2016, in Houston, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) sustained a compensable injury on (date of injury), and that the respondent/cross-appellant (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001.

The claimant appealed the hearing officer's timely notice determination arguing that such determination is so against the great weight of the evidence to be manifestly unjust. The carrier responded, urging affirmance.

The carrier cross-appealed the hearing officer's compensable injury determination arguing that the evidence is insufficient to support a compensable injury determination. Furthermore, the carrier states that there is no compensable injury given that the hearing officer determined that the claimant did not timely report the injury to her employer. The appeal file does not contain a response to the carrier's appeal from the claimant.

**DECISION**

Affirmed in part and reversed and rendered in part.

The claimant was injured on (date of injury), when she slipped and fell landing on her back while carrying a stepladder.

**TIMELY NOTICE**

The hearing officer's findings that the claimant did not on (date of injury), or at any time within 30 days following (date of injury), notify an employee of the employer who held a supervisory or management position that the claimant was claiming to have sustained an injury on such date while in the course and scope of her employment; neither the employer, nor any employee of the employer who held a supervisory or management position, nor the carrier had actual knowledge of the claimed injury within the 30-day period following (date of injury), and the claimant did not establish good cause for her failure to report the claimed injury to the employer in a timely manner are supported by sufficient evidence.

The hearing officer's determination that the carrier is relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001 is supported by sufficient evidence and is affirmed.

### **COMPENSABLE INJURY**

The hearing officer's findings that the claimant sustained damage or harm to the physical structure of her body while in the course and scope of employment on (date of injury), is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. However, the hearing officer erred in concluding that the claimant sustained a compensable injury because the carrier is relieved of liability under Section 409.002 based on the claimant's failure without good cause to give timely notice of her injury to her employer. Section 401.011(10) defines "compensable injury" as "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." The Appeals Panel has previously held that if an employee fails without good cause to timely notify the employer of an injury sustained in the course and scope of her employment, thereby relieving the carrier of liability under Section 409.002, the employee does not have a compensable injury because compensation is not payable. Appeals Panel Decision (APD) 020960, decided; June 5, 2002; APD 011685, decided August 24, 2001; APD 991704, decided September 23, 1999; and APD 951709, decided November 29, 1995.

Consequently, we reverse the hearing officer's determination that the claimant sustained a compensable injury on (date of injury), and render a decision that the claimant did not sustain a compensable injury on (date of injury), because of the claimant's failure to timely notify her employer pursuant to Section 409.001.

The true corporate name of the insurance carrier is **MARKEL 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 75201-3136.**

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K. Eugene Kraft  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge