

APPEAL NO. 950377

This appeal arises pursuant to the Texas workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). On February 1, 1995, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The hearing officer found that appellant (carrier) did not notify the employer of cancellation of its policy by one of two ways set forth by statute, Section 406.008, and therefore is liable for an injury to employer's employee on (date of injury). Carrier asserts that notice was received by both the employer and Texas Workers' Compensation Commission (Commission) within the time frame called for by Section 406.008 and carrier is not liable for injury beyond the coverage period. Respondent (claimant) replies that the decision should be affirmed.

DECISION

Affirmed.

Claimant's condition was not discussed at this hearing. The benefit review conference report only lists "back and arms" and "left hand pain" apparently through an injury on (date of injury). The sole issue at this hearing is whether carrier's coverage of (employer) remained in effect on (date of injury). The coverage contract was stipulated as running from August 13, 1993, to August 13, 1994. The issue turned on when carrier effectively acted under Section 406.008 to cancel its policy with employer.

The parties also stipulated, in addition to the term of the contract, that notice of nonrenewal was timely received by the employer, but was by regular, not certified, mail. Based on evidence offered by the carrier and/or stipulations as set forth, the hearing officer found that notice to the employer by carrier was not by certified mail or by hand delivery, but that notice was received by employer by regular mail on or about June 12, 1994; also found was that the Texas Workers' Compensation Commission received notice delivered by hand on June 15, 1994.

Section 406.008 provides:

- (a) An insurance company that cancels a policy of workers' compensation insurance or that does not renew the policy by the anniversary date of the policy shall deliver notice of the cancellation or nonrenewal by certified mail or in person to the employer and the commission not later than:
 - (1) the 30th day before the date on which the cancellation or nonrenewal takes effect; or
 - (2) (not applicable)

(c)Failure of the insurance company to give notice as required by this section extends the policy until the date on which the required notice is provided to the employer and the commission.

Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 110.1 (Rule 110.1) is titled "Requirements for Notifying the Commission of Insurance Coverage." This heading appears to make Rule 110.1 not controlling since there is no question in this case that notice was given to the Commission, and that it was delivered in one of two ways specified by Section 406.008. However, Rule 110.1(f) describes results not limited to whether or not the Commission is notified; it reads:

(f)Insurance coverage remains in effect until the end of the policy period, the beginning date of a new policy or until the commission and the employer receive the TWCC-20 and the later of (Emphasis added):

(1)the date 30 days after receipt of the notice required by [now Section 46.08];

(2) & (3) (not applicable)

At hearing the question argued was whether the delivery of notice was required to be by certified mail. Both the evidence and the findings show that both entities required to be notified, the Commission and the employer, received notice on different dates in June 1994 for a contract expiration of August 13, 1994.

Past Appeals Panel opinions have not addressed whether certified mail must have been used to effect cancellation. See generally Texas Workers' Compensation Commission Appeal No. 950042, decided February 23, 1995. While reversal was considered since both entities clearly received the notice in a timely manner and Rule 110.1 emphasizes receipt rather than the form of delivery, Section 406.008 does dictate the manner of providing notice.

An action in condemnation, Rotello v. Brazos Company Water Control & Improvement District, 574 S.W.2d 208 (Tex. Civ. App.-Houston [1st Dist] 1978, no writ) addressed a requirement for personal service on the party or his attorney. The notice to the attorney was not sufficient to affect other parties; the court commented that "actual knowledge of the time and place of the hearing does not eliminate the necessity for personal service." It also notes that when a statute "prescribes the method" for notice, it must be followed with reasonable strictness. More recently, John v State, 826 S.W.2d 138 (Tex. 1992), cited Rotello and compared the notice requirements in the Texas Property Code to the Texas Rules of Civil Procedure. Whereas Rule 239a of the Rules of Civil Procedure specifically provides that a failure to comply with notice provisions does not affect finality of a judgment, no such provision exists in the Texas Property Code. Since it is "clear and unambiguous,"

the court said it should be enforced as written. In addition the court points out that notice is designed to "protect the landowner." The court reversed and remanded because of the failure to give notice by "registered or certified mail" to the parties "the next working day." The failure in John, it should be noted, was the date the clerk mailed the notice, not whether by certified mail or not. Even though the latter case dealt primarily with time of notice, we conclude that the reasoning in these cases is persuasive that notice must be delivered as set forth in Section 406.008.

Since the carrier failed to follow the statutory procedures specified for cancellation, coverage remained in effect as of (date of injury). See Texas Workers' Compensation Commission Appeal No. 91075, decided January 2, 1992.

The decision and order of the hearing officer set forth at the conclusion of the opinion are sufficiently supported by the evidence and are affirmed. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Lynda H. Nesenholz
Appeals Judge

Alan C. Ernst
Appeals Judge