

APPEAL NO. 032473
FILED NOVEMBER 7, 2003

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 August 18, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____. The claimant appeals this decision and asserts that that respondent (employer) did not have standing to dispute compensability. The employer urges affirmance of the hearing officer's decision.

DECISION

Reversed and rendered.

Section 409.011(b)(4) provides that an employer has the right to contest the compensability of an injury if the insurance carrier accepts liability for the payment of benefits. The evidence reflects that the carrier first received written notice of the claimed injury on May 8, 2002, and did not file a dispute within seven days thereafter. In January 2003, the carrier, via a benefit dispute agreement, acknowledged that it "waived it's right to dispute the compensability of this claimant as set forth in the Down's [Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002)] Decision." In Texas Workers' Compensation Commission Appeal 030380-s, decided April 10, 2003, the Appeals Panel, applying the Downs decision, held that Section 409.021(a) requires that a carrier act to initiate benefits or to dispute compensability within seven days of first receiving written notice of an injury or waive its right to dispute compensability. The hearing officer determined that the carrier did not file a dispute within seven days of receiving written notice of the claimed injury and that it entered into an agreement that it waived the right to contest compensability of the claim. Based on these findings of fact, the hearing officer then concluded that the carrier accepted liability for the claimed injury and that the claimant did not sustain a compensable injury on _____.

The pivotal issue is whether, under the facts of this case, the carrier accepted liability for the injury in question. In Texas Workers' Compensation Appeal No. 94788, decided August 2, 1994, the carrier argued that its failure to timely contest compensability as required by Section 409.021 should, as a matter of law, be deemed an acceptance of liability for purposes of triggering the employer's right to contest compensability independent of the carrier. The hearing officer disagreed and concluded that a carrier accepts liability for purposes of Section 409.011(b)(4) only by a voluntary, affirmative act, not, as in that case, by default or through inattention to its responsibilities to timely dispute compensability. The Appeals Panel affirmed holding that:

the carrier's failure to timely contest the compensability of the injury as required by Section 409.201(c) [sic, should be Section 409.021(c)], under the particular circumstances of this case, did not in itself constitute

acceptance of liability for the payment of benefits under Section 409.011(b)(4) which gives the employer the independent right to contest compensability.

For these reasons, the hearing officer erred in determining that the carrier accepted liability for the claimed injury. Consequently, the employer did not have standing to contest compensability of the injury and it was error for the hearing officer to resolve the compensability issue. Accordingly, the hearing officer's decision is reversed and a new decision rendered that because the carrier waived the right to contest compensability of the claimed injury, it did not accept liability of the injury as required in Section 409.011(b)(4) and, therefore, the employer does not have standing to contest compensability of the _____, claimed injury.

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

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge