

APPEAL NO. 032610  
FILED NOVEMBER 17, 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 September 10, 2003. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, but suffers from ordinary diseases of life; and (2) the respondent (carrier) did not timely pay or dispute the claim in this case, but has not waived the right to contest compensability of the claimant's alleged injury, pursuant to Section 409.022, because the claimant did not suffer harm to the physical structure of the body on \_\_\_\_\_. The claimant appeals these determinations, "since there is medical [evidence] to substantiate an injury." The carrier urges affirmance.

DECISION

Reversed and rendered.

The claimant testified that he experienced a pop in his left shoulder joint with pain to his left shoulder, upper back, and neck on \_\_\_\_\_, while attempting to reshelve a large claim file for his employer. The claimant was treated by Dr. F, on March 27, 2003, with complaints of neck pain, mid-back pain, and left shoulder pain. He was ultimately diagnosed with left rotator cuff tear syndrome, left shoulder/upper arm strain/sprain, thoracic spine strain/sprain, and cervical spine strain/sprain. MRIs revealed an intact rotator cuff and a 2-3 mm posterior disc at C5-6, causing mild posterior displacement of the thecal sac. The claimant's treating doctor opined that the soft tissue injuries were caused by the incident on \_\_\_\_\_, but the disc bulge is "more likely the result of degenerative changes" and may have contributed to the development of the injury and the claimant's symptomology. The claimant was also seen by Dr. W, on March 29, 2003, who diagnosed a "sprain of unspecified site of shoulder and upper arm" based on physical examination. On May 1, 2003, Dr. L, made findings of tenderness and spasm of the paravertebral muscles, displaced cervical disc, and left carpal tunnel syndrome based on EMG. The evidence also indicates that the claimant has a history of prior injuries involving the neck, left arm, and upper back. In view of the evidence, the hearing officer found that the claimant did not sustain an injury in the course and scope of his employment, that the claimant has degenerative disc disease, and that the claimant's medical condition is the result of ordinary diseases of life.

With regard to the issue of carrier waiver, the hearing officer found that the carrier first received written notice of the claimed injury on March 14, 2003, that the carrier did not file a dispute of the claimed injury with the Texas Workers' Compensation Commission until April 24, 2003, and that the carrier did not pay or dispute the claimed injury within seven days of the date it received written notice of the claim. These findings of fact were not appealed. Notwithstanding these findings, the hearing officer

concluded that the carrier did not waive its right to dispute the claimed injury, because the claimant did not suffer harm to the physical structure of the body on \_\_\_\_\_. In reaching his decision, the hearing officer cited Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.).

The hearing officer erred in determining that the carrier did not waive its right to dispute the claimed injury and that the claimant did not sustain a compensable injury. In Williamson, the court held that “if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier’s failure to contest compensability cannot create an injury as a matter of law.” The Appeals Panel has recognized that Williamson is limited to situations where there is a determination that the claimant had no injury, as opposed to cases where there is an injury which was determined by the hearing officer not to be causally related to the claimant’s employment. Texas Workers’ Compensation Commission Appeal No. 020941, decided June 6, 2002. In the present case, the hearing officer found that the claimant has an injury to the cervical spine, albeit degenerative disc disease. Additionally, the evidence indicates that the claimant sustained further injuries to his neck, upper back, and left shoulder. Because the carrier failed to dispute the claimed injury within seven days after receipt of written notice, we reverse the hearing officer’s decision and render a new decision that the carrier waived its right to dispute the claimed injury pursuant to Section 409.021, and that the claimant sustained a compensable injury, as a matter of law.

The hearing officer's decision and order is reversed and rendered consistent with our decision above.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701.**

---

Edward Vilano  
Appeals Judge

CONCUR:

---

Elaine M. Chaney  
Appeals Judge

---

Gary L. Kilgore  
Appeals Judge