

APPEAL NO. 041539  
FILED AUGUST 27, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on May 24, 2004. In (Docket No. 1), the hearing officer determined that the respondent/cross-appellant (carrier 1) is relieved from liability in this matter under Section 409.004 because of the appellant/cross-respondent's (claimant) failure to file a claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year of the injury as required by Section 409.003; that carrier 1 has not waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022; that carrier 1 is liable for the payment of accrued benefits pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3) due to a failure to dispute or initiate payment of benefits within seven days of the date it received written notice of the claimed injury for the period beginning on January 9, 2003, and continuing through January 27, 2004; that the claimant did not sustain a compensable injury in the form of an occupational disease; that the date of injury for the alleged chronic skin rash, pursuant to Section 408.007, the date the claimant knew or should have known the alleged disease may be related to his employment, is (Date of injury for Docket No. 1); that the date of injury for the alleged throat and larynx irritation, pursuant to Section 408.007, is (Date of injury for Docket No. 2); that carrier 1 is relieved from liability, other than that imposed by Rule 124.3, under Section 409.002 because of the claimant's failure to timely notify his employer of the alleged occupational disease(s) pursuant to Section 409.001; and that the claimant did not have disability resulting from the claimed injury because the injury is not compensable.

The claimant appealed the hearing officer's determinations regarding failure to timely file a claim with the Commission; carrier 1 waiver under Sections 409.021 and 409.022; compensability of the injury; date of injury(s); failure to timely notify his employer; and disability. Carrier 1 responded, urging affirmance of those determinations. Carrier 1 appealed the determination that it is liable for accrued benefits pursuant to Rule 124.3. The claimant responded, urging affirmance.

In (Docket No. 2), the hearing officer determined that the claimant did not sustain a compensable injury in the form of an occupational disease; that the date of injury for the alleged occupational disease in the form of a skin rash is (Date of injury for Docket No. 1); that the date of injury for the alleged occupational disease in the form of throat and larynx irritation is (Date of injury for Docket No. 2); that the respondent (carrier 2) is relieved from liability under Section 409.002 because of the claimant's failure to notify his employer of either of the alleged occupational diseases pursuant to Section 409.001; and that the claimant did not have disability. The claimant appealed the determinations regarding compensability of the injury; the date of injury(s); timely notice to his employer; and disability. Carrier 2 responded, urging affirmance.

## DECISION

Affirmed in part and reversed and rendered in part.

We first address the appeals regarding Docket No. 1. The hearing officer did not err in determining the date of injury(s) and that the claimant did not sustain a compensable injury, and therefore did not have disability. We have reviewed the complained-of determinations and conclude that these disputed issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We likewise affirm the hearing officer's determination that carrier 1 did not waive the right to contest compensability of the claimed injury(s) by not timely contesting the injury(s) in accordance with Sections 409.021 and 409.022. The record reflects, and the hearing officer found, that carrier 1 received first written notice of the claimed injury(s) on January 20, 2004; that it electronically filed a Payment of Compensation or Notice of Refused/Disputed Claim ("cert-21") agreeing to pay benefits as they accrue with the Commission on January 22, 2004; and that it disputed the claim by filing a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) with the Commission on January 28, 2004. We have held that a carrier that agrees to pay benefits as they accrue within seven days of its first written notice of injury, satisfies the requirements of Section 409.021 and gains the right to dispute the claim for up to 60 days. If the carrier eventually disputes the claim after the initial seven-day period and before the 60 day period has run, the carrier is liable for benefits which have accrued up until the date of the dispute. See Texas Workers' Compensation Commission Appeal No. 022375-s, decided October 31, 2002. Under the facts of this case, we find that carrier 1 did not waive the right to contest the compensability of the claimed injury(s).

The hearing officer erred in determining that carrier 1 is relieved from liability pursuant to Sections 409.002 and 409.004 because the claimant failed to timely notify his employer of the claimed injury(s) and because he failed to file a claim for compensation within one year of the injury.

Section 409.001 provides, in pertinent part, that in cases of an occupational disease an injured employee must notify the employer of an injury not later than the 30th day after the employee knew or should have known that the injury may be work related. Section 409.002 provides that failure to timely notify the employer of an injury relieves the employer and its carrier of liability. In evidence is a pass to allow the claimant to visit the employer's dispensary dated November 27, 1995. The pass clearly indicates that the reason for the visit was a "claimed occupational injury/illness" from exposure to fumes, which caused an irritated throat. The pass and note made by the medical department do not mention a skin rash. The pass has a signature on the line designated for a supervisor. The hearing officer commented that the above-mentioned pass was not notice of an alleged occupational disease, but merely notice of a possible

injury. No particular form or manner of notice is required and notice is sufficient if it reasonably informs the employer of the general nature of the injury and that it is claimed to be work related. DeAnda v. Home Insurance Co., 618 S.W.2d 529 (Tex. 1980). In Texas Workers' Compensation Commission Appeal No. 032997, decided December 30, 2003, we reversed and rendered a hearing officer's determination that the claimant did not timely notify her employer of a work-related injury. In that case the claimant was unloading a truck with her supervisor as the claimant lifted a box, she indicated that she thought she hurt her back, laughed, and continued to work. We found that the hearing officer's determination that the above comment did not constitute notice to the employer was against the great weight of the evidence and rendered a decision that the claimant gave timely notice. Under the evidence presented in the matter now before us, we find that the hearing officer's determination that the claimant failed to timely notify his employer of an injury in the form of throat and larynx irritation is against the great weight and preponderance of the evidence, and we render a decision that the claimant did give timely notice to his employer and that carrier 1 is not relieved from liability under Section 409.002. We note that the hearing officer's determination that the claimant failed to notify his employer of the (Date of injury for Docket No. 1), skin rash and that carrier 1 is therefore relieved from liability is supported by the record and is affirmed.

The hearing officer erred in determining that carrier 1 is relieved from liability in this matter under Section 409.004. In cases of occupational diseases, Section 409.003 requires that an injured employee file a claim for compensation with the Commission not later than one year after the date the injured employee knew or should have known that the injury was work related. Section 409.004 generally provides that an employee's failure to comply with Section 409.003 relieves the carrier from liability. Section 409.008 provides that if the employer fails to report an injury to its carrier as provided for in Section 409.005, the period of time an employee has for filing a claim for compensation is tolled until the date the employer furnishes the required report. The record reflects that the claimant did not file his claim with the Commission until December 5, 2003. It is unclear on what date the employer furnished carrier 1 with a notice of injury, but carrier 1's TWCC-21 indicates such notice was received on January 20, 2004. The hearing officer based his determination that carrier 1 is relieved from liability pursuant to Section 409.004 on the premise that the employer was never given notice of a work-related injury, therefore it had no obligation to notify the carrier and the time for the claimant to file a claim was not tolled by Section 409.008. Because we have reversed the hearing officer's determination regarding notice to the employer regarding the throat and larynx irritation, we find that the time for the claimant to file a claim for those injuries was in fact tolled. This is not the case for the skin rash as discussed above. Therefore, we reverse the hearing officer's determination that carrier 1 is relieved from liability for the throat and larynx irritation under Section 409.004, and render a decision that carrier 1 is not so relieved. The hearing officer's determination on this issue regarding the claimed skin rash is affirmed.

The hearing officer did not err in determining that carrier 1 is liable for accrued benefits pursuant to Rule 124.3, but erred in determining the time period. The version of Rule 124.3 which is applicable to this case provides that if a carrier files a notice of

denial after the seventh day but before the 60th day after receipt of written notice of injury, the carrier is liable for and shall pay all benefits that had accrued and were payable prior to the date the carrier filed the notice of denial. Even though we have affirmed the hearing officer's determination that neither the (Date of injury for Docket No. 1), or the (Date of injury for Docket No. 2), injury is compensable, we render a decision that carrier 1 is liable for accrued benefits for both injuries pursuant to Rule 124.3 for the period beginning (Date of injury for Docket No. 1), and continuing through January 27, 2004. See Texas Workers' Compensation Commission Appeal No. 002297, decided November 13, 2000.

We next turn to Docket No. 2. The hearing officer did not err in determining the date of the claimed injury(s) and that the claimant did not sustain a compensable injury, so he therefore did not have disability. We have reviewed the complained-of determinations and conclude that the disputed issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

For the reasons set out above, we reverse the hearing officer's determination that carrier 2 is relieved from liability under Section 409.002 because of the claimant's failure to notify his employer of either of the alleged occupational diseases pursuant to Section 409.001 only as that determination relates to the throat and larynx irritation injury, and render a decision that carrier 2 is not relieved from liability under Section 409.002 because the claimant did timely notify his employer of the alleged occupational disease consisting of throat and larynx irritation, but carrier 2 is relieved from liability for the skin rash injury. We note that this does not change the ultimate outcome of Docket No. 2.

In Docket No. 1, we affirm the hearing officer's determinations regarding the date of injury(s); compensability; disability; carrier 1 waiver; carrier 1 is relieved from liability for the December 31, 2004, injury in the form of a skin rash pursuant to Section 409.002; carrier 1 is relieved from liability for the (Date of injury for Docket No. 1), injury pursuant to Section 409.004; and that carrier 1 is liable for the payment of accrued benefits for both injuries pursuant to Rule 124.3.

As to the (Date of injury for Docket No. 2), injury, we reverse the hearing officer's determination that carrier 1 is relieved from liability pursuant to Section 409.002 because the claimant failed to timely notify his employer, and we render a decision that carrier 1 is not relieved from liability under Section 409.002 because the claimant did give timely notice to his employer for that injury. As to the (Date of injury for Docket No. 2), injury, we reverse the hearing officer's determination that carrier 1 is relieved from liability pursuant to Section 409.004 because the claimant failed to timely file a claim for compensation with the Commission within one year, and we render a decision that carrier 1 is not relieved from liability pursuant to Section 409.004 because the time for the claimant to file a claim for compensation was tolled pursuant to Section 409.008.

For both injuries, we reverse the hearing officer's determination that carrier 1 is liable for accrued benefits pursuant to Rule 124.3 from January 9, 2003, through January 27, 2004, and we render a decision that carrier 1 is liable for accrued benefits pursuant to Rule 124.3 from (Date of injury for Docket No. 1), and continuing through January 24, 2004.

In Docket No. 2, we affirm the hearing officer's determinations regarding the date of injury(s); compensability; disability; and carrier 2 is relieved from liability for the (Date of injury for Docket No. 1), injury pursuant to Section 409.002. We reverse the hearing officer's determination that carrier 2 is relieved from liability for the (Date of injury for Docket No. 2), injury pursuant to Section 409.002, and we render a decision that carrier 2 is not relieved from liability for the (Date of injury for Docket No. 2), injury pursuant to Section 409.002.

The true corporate name of insurance carrier 1 is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

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

The true corporate name of insurance carrier 2 is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201.**

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Daniel R. Barry  
Appeals Judge

CONCUR:

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Margaret L. Turner  
Appeals Judge

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Edward Vilano  
Appeals Judge