

APPEAL NO. 071642
FILED OCTOBER 17, 2007

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 July 31, 2007. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of _____, includes the conditions of degenerative disc disease at the L3-S1 levels, lumbar stenosis secondary to bulging disc and facet hypertrophy at the L3-4 and L4-5 levels with severe stenosis, and anterior listhesis at L4-5; and (2) the appellant (carrier) waived the right to contest compensability of degenerative disc disease at the L3-S1 levels, lumbar stenosis secondary to bulging disc and facet hypertrophy at the L3-4 and L4-5 levels with severe stenosis, and anterior listhesis at L4-5 by not timely contesting these conditions in accordance with Section 409.021. The carrier appealed, disputing both the extent of injury and waiver determinations. The respondent (claimant) responded, urging affirmance.

DECISION

Reversed and rendered in part and affirmed in part.

The parties stipulated that on _____, the claimant sustained a compensable injury. The claimant testified that he injured his back and shoulder when a coworker that was helping him carry a heavy box dropped his end about two and a half feet. The hearing officer specifically found that the claimant has been diagnosed with degenerative disc disease at the L3-S1 levels, lumbar stenosis secondary to bulging disc and facet hypertrophy at the L3-4 and L4-5 levels with severe stenosis, and anterior listhesis at L4-5 and that these diagnoses arose out of or naturally flowed from the compensable injury.

EXTENT OF INJURY

The hearing officer's decision that the compensable injury extends to include these claimed conditions is supported by sufficient evidence and is affirmed.

WAIVER

The hearing officer found that the carrier received written notice of the claimed injury on August 19, 1999, and that the carrier did not notify the claimant and the Texas Department of Insurance, Division of Workers' Compensation (Division) that it would begin payment of benefits or that it was refusing to pay benefits within 7 days of the written notice of August 19, 1999. Neither of these findings were appealed. The hearing officer noted in her Background Information section that the carrier took no action to dispute compensability until November 21, 2006, when it filed a notice of dispute and refusal to pay benefits. However, the hearing officer applied a 60-day waiver period, and after discussing medical records dated August 30, 1999, and

September 24, 1999, determined that the carrier had waived the right to contest the claimed conditions.

Section 409.021(a), effective for a claimed compensable injury that occurred before September 1, 2003, provides that an insurance carrier shall, not later than the 7th day after the receipt of written notice of an injury, begin the payment of benefits as required by the 1989 Act or notify the Division and the employee in writing of its refusal to pay benefits. In Appeals Panel Decision (APD) 030380-s, decided April 10, 2003, the Appeals Panel noted that in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), the Texas Supreme Court stated: "Taking some action within 7 days is what entitles the carrier to a 60-day period to investigate or deny compensability."

There is no evidence that the carrier took any action within 7 days after receiving written notice of the injury on August 19, 1999, therefore the waiver period in this case is 7 days from the date of first written notice of the injury, not 60 days. In APD 041738-s, decided September 8, 2004, the Appeals Panel established that when a carrier does not timely dispute the compensability of an injury, the compensable injury is defined by the information that could have been reasonably discovered by the carrier's investigation prior to the expiration of the waiver period. The MRI of the claimant's spine was not performed within the 7 day waiver period. Upon review of the record, we hold that the carrier could not have reasonably discovered in its investigation that the conditions at issue were part of the claimed injury within the 7 day waiver period.

We reverse the hearing officer's determination that the carrier waived the right to contest compensability of degenerative disc disease at the L3-S1 levels, lumbar stenosis secondary to bulging disc and facet hypertrophy at the L3-4 and L4-5 levels with severe stenosis and anterior listhesis at L4-5 by not timely contesting these conditions in accordance with Section 409.021. We render a new decision that the carrier has not waived the right to contest compensability of degenerative disc disease at the L3-S1 levels, lumbar stenosis secondary to bulging disc and facet hypertrophy at the L3-4 and L4-5 levels with severe stenosis and anterior listhesis at L4-5.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of _____, includes the conditions of degenerative disc disease at the L3-S1 levels, lumbar stenosis secondary to bulging disc and facet hypertrophy at the L3-4 and L4-5 levels with severe stenosis, and anterior listhesis at L4-5. We reverse the hearing officer's determination that the carrier waived the right to contest compensability of degenerative disc disease at L3-S1 levels, lumbar stenosis secondary to bulging disc and facet hypertrophy at the L3-4 and L4-5 levels with severe stenosis and anterior listhesis at L4-5 by not timely contesting these conditions in accordance with Section 409.021 and render a new decision that the carrier has not waived the right to contest compensability of degenerative disc disease at the L3-S1 levels, lumbar stenosis secondary to bulging disc and facet hypertrophy at the L3-4 and L4-5 levels with severe stenosis and anterior listhesis at L4-5.

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

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

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge