

APPEAL NO. 211335  
FILED OCTOBER 14, 2021

This appeal arises pursuant to the Texas Workers' Compensation Act, Tex. Lab. Code Ann. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 27, 2021, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the appellant (claimant) did not sustain a compensable injury on (date of injury); (2) the respondent (carrier) has waived the right to contest compensability of the claimed injury for failure to timely dispute the injury in accordance with Section 409.021; and (3) the claimant did not have disability from December 4, 2020, through the date of the CCH. The claimant appealed, disputing the ALJ's determinations regarding compensability and disability. The carrier responded, urging affirmance of the ALJ's determinations. The ALJ's determination that the carrier has waived the right to contest compensability of the claimed injury for failure to timely dispute the injury in accordance with Section 409.021 was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that he was injured on (date of injury), when he fell backwards off a ladder while changing a light bulb in an apartment. The claimant also testified that because of the injury he lost consciousness, and when he woke up, he had a big headache and pain in his neck, back, and left shoulder. The claimant additionally testified he received medical treatment for his injury.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.—Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are 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); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

**COMPENSABLE INJURY AND CARRIER WAIVER**

Two of the issues before the ALJ were whether the claimant sustained a compensable injury on (date of injury), and whether the carrier waived the right to contest compensability of the claimed injury by not timely contesting the injury in

accordance with Section 409.021. The carrier argued at the CCH that *Continental Casualty Company v. Williamson*, 971 S.W.2d 108 (Tex. App.—Tyler 1998, no pet.), applied in this case because there was no injury, and because there was no injury there was no waiver.

Section 409.021(a) provides in part that for claims based on a compensable injury that occurred on or after September 1, 2003, that no later than the 15th day after the date on which an insurance carrier receives written notice of an injury, the insurance carrier shall: (1) begin the payment of benefits as required by the 1989 Act; or (2) notify the [Texas Department of Insurance, Division of Workers' Compensation (Division)] and the employee in writing of its refusal to pay. Section 409.021(c) provides in part that if an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives the right to contest compensability.

The ALJ noted in her discussion that medical records in evidence show the claimant was examined at Memorial Hermann hospital on (date), for a trip and fall occurring "6 days ago," and that he only complained of direct trauma to his chest and right knee due to a "trip and fall on Tuesday." The ALJ also noted (date of injury), the date of the claimed injury, was a Sunday. The ALJ stated the evidence was not persuasive that the claimant sustained damage or harm to the physical structure of his body on (date of injury). Based on this rationale the ALJ found that the claimant did not sustain damage or harm to the physical structure of his body while in the course and scope of his employment on (date of injury), and determined the claimant did not sustain a compensable injury on (date of injury).

In *Williamson, supra*, the court held that "if [an ALJ] 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 previously recognized that *Williamson* is limited to situations where there is a determination that the claimant did not have an injury, that is, no damage or harm to the physical structure of the body, as opposed to cases where there is an injury, which was determined by the ALJ not to be causally related to the claimant's employment. Appeals Panel Decision (APD) 070903-s, decided July 27, 2007. See also APD 120090, decided March 22, 2012. When a carrier waives its right to contest compensability of the injury, the injury becomes compensable as a matter of law, provided that there is physical harm or damage to the body, and the carrier is liable for workers' compensation benefits. APD 023017, decided January 27, 2003; APD 030280, decided March 27, 2003; APD 162591, decided February 16, 2017.

As noted by the ALJ in this case there are medical records from Memorial Hermann hospital dated (date), the day after the claimed injury, indicating the claimant described a slip and fall injury that occurred six days prior to (date). These records reflect the claimant was diagnosed with an accidental fall, a neck strain, and a strain of the back. Also in evidence are records from Rossel Medical Care dated April 13, 2021, April 27, 2021, May 27, 2021, and June 24, 2021. These records also show the claimant was diagnosed with a cervical sprain/strain, a thoracic sprain/strain, and a lumbar sprain/strain, among other conditions, due to the claimed (date of injury), injury.

The ALJ indicates in her discussion that she based her finding of fact that the claimant did not sustain damage or harm to the physical structure of his body while in the course and scope of his employment on (date of injury), on her belief that “the evidence was not persuasive that [the claimant] sustained damage or harm to the physical structure of his body on (date of injury).” However, medical records in this case reflect there was damage or harm to the physical structure of the claimant’s body on (date of injury); therefore, *Williamson, supra*, does not apply. The ALJ’s finding is against the great weight and preponderance of the evidence.

Although the ALJ determined the claimant did not sustain a compensable injury on (date of injury), because she believed the evidence was not persuasive the claimant sustained damage or harm to the physical structure of his body on (date of injury), she also determined the carrier waived the right to contest compensability of the claimed injury for failure to timely dispute the injury in accordance with Section 409.021. The ALJ’s determination on carrier waiver under Section 409.021 was not appealed and has become final pursuant to Section 410.169. The carrier in this case did not dispute the claimed injury within 60 days of written notice of the claimed injury, and as explained above, *Williamson, supra*, does not apply. Therefore, we reverse the ALJ’s determination that the claimant did not sustain a compensable injury on (date of injury), and we render a new decision that the claimant did sustain a compensable injury on (date of injury).

## **DISABILITY**

The ALJ’s determination that the claimant did not have disability from December 4, 2020, through the date of the CCH is supported by sufficient evidence and is affirmed.

## **SUMMARY**

We reverse the ALJ’s determination that the claimant did not sustain a compensable injury on (date of injury), and we render a new decision that the claimant did sustain a compensable injury on (date of injury).

We affirm the ALJ's determination that the claimant did not have disability from December 4, 2020, through the date of the CCH.

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

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge