

APPEAL NO. 220880  
FILED AUGUST 19, 2022

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 April 12, 2022, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by determining that: (1) the respondent 1/cross-appellant (claimant) sustained a compensable injury on (date of injury); and (2) the appellant/cross-respondent (self-insured) is relieved from liability under Section 409.002 because the claimant failed to timely notify her employer pursuant to Section 409.001. The self-insured appealed, disputing the ALJ's determination that the claimant sustained a compensable injury. The appeal file does not contain a response from the claimant to the self-insured's appeal. However, the claimant filed an untimely cross-appeal of the ALJ's determination of timely notice to her employer. The self-insured responded to the claimant's cross-appeal, urging affirmance of the timely notice determination. The appeal file does not contain a response from either respondent 2 (subclaimant 1) or respondent 3 (subclaimant 2).

**DECISION**

Reversed and rendered.

**UNTIMELY CROSS-APPEAL**

The deemed date of the claimant's receipt of the ALJ's decision was April 26, 2022, and a timely cross-appeal must have been filed no later than Tuesday, May 17, 2022. The claimant's cross-appeal is dated May 19, 2022, and was sent to and received by the Texas Department of Insurance, Division of Workers' Compensation (Division) via facsimile transmission on May 19, 2022. The appeal file does not contain another copy of the cross-appeal sent to the Division. Accordingly, the cross-appeal, having not been filed or mailed by May 17, 2022, is untimely. See 28 Tex. Admin. Code §§ 143.3(d), 102.5(d), and 102.3(b) (Rules 143.3(d), 102.5(d), and 102.3(b)). Therefore, the ALJ's determination that the self-insured is relieved from liability under Section 409.002 because the claimant failed to timely notify her employer pursuant to Section 409.001 became final pursuant to Section 410.169.

**COMPENSABLE INJURY**

The ALJ's finding that the claimant sustained damage or harm to the physical structure of her body while in the course and scope of employment on (date of injury), is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. However, the ALJ

erred in concluding that the claimant sustained a compensable injury because the self-insured is relieved of liability under Section 409.002 based on the claimant's failure without good cause to give timely notice of her injury to her employer. Section 401.011(10) defines "compensable injury" as "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." The Appeals Panel has previously held that if an employee fails without good cause to timely notify the employer of an injury sustained in the course and scope of her employment, thereby relieving the carrier of liability under Section 409.002, the employee does not have a compensable injury because compensation is not payable. Appeals Panel Decision (APD) 020960, decided June 5, 2002; APD 011685, decided August 24, 2001; APD 991704, decided September 23, 1999; APD 951709, decided November 29, 1995; and APD 161343, decided September 8, 2016.

Consequently, we reverse the ALJ's determination that the claimant sustained a compensable injury on (date of injury), and render a decision that the claimant did not sustain a compensable injury on (date of injury), because of the claimant's failure to timely notify her employer pursuant to Section 409.001.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

(NAME)  
(ADDRESS)  
(CITY), (STATE) (ZIP CODE).

For service by mail the address is:

(NAME)  
(ADDRESS)  
(CITY), (STATE) (ZIP CODE).

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Margaret L. Turner

Appeals Judge

CONCUR:

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Cristina Beceiro

Appeals Judge

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Carisa Space-Beam

Appeals Judge