

APPEAL NO. 030663-s
FILED MAY 1, 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 March 4, 2003. With respect to the issues before him, the hearing officer determined that the appellant (carrier) waived the right to contest compensability of the respondent's (claimant) _____, injury by not timely contesting it in accordance with Section 409.021; that the claimant sustained a compensable injury on _____; and that the claimant's injury did not occur while the claimant was in a state of intoxication. In its appeal, the appellant (carrier) asserts error in each of those determinations. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The resolution of the carrier waiver issue is determinative of each of the other issues presented here. The carrier does not dispute that it received written notice of the claimant's _____, injury on August 2, 2002. Indeed, the carrier acknowledged on the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) that it received written notice of the injury on that date. The carrier filed its TWCC-21 contesting compensability with the Texas Workers' Compensation Commission on August 15, 2002. In challenging the hearing officer's determination that it waived the right to contest compensability in accordance with Sections 409.021 and 409.022, the carrier relies upon our decision in Texas Workers' Compensation Commission Appeal No. 023010-s, decided January 9, 2003. In Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003, we had occasion to revisit our decision in Appeal No. 023010-s. In so doing, we focused on language in the Supreme Court's decision in Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002) and determined that the carrier is required to take some action within seven days of receiving written notice of the injury in order to be entitled to the 60-day period to investigate a claim and deny compensability. It cannot simply sit back and rely on the fact that benefits did not accrue prior to the date it filed its dispute to argue that it did not waive its right to contest. In Appeal No. 030380-s, we specifically stated that we "hereafter decline to follow Appeal No. 023010-s." As such, we cannot agree that the hearing officer erred in not applying that decision herein. In this instance, there is no evidence in the record that the carrier "took some action" within the seven-day period indicating that it had accepted the claim or intended to pay benefits; thus, the hearing officer did not err in determining that the carrier waived its right to dispute compensability of the claimed injury.

Due to our affirmance of the hearing officer's waiver determination, we likewise affirm his determination that the claimant sustained a compensable injury because the

injury became compensable as a matter of law due to the carrier's waiver of its right to dispute compensability. In addition, by waiving its right to contest compensability, the carrier also lost its right to assert an intoxication defense under Section 406.032(1)(A). This determination is consistent with our decisions in Texas Workers' Compensation Commission Appeal No. 022027-s, decided September 30, 2002, and Texas Workers' Compensation Commission Appeal No. 022091, decided October 7, 2002, where we held that by waiving its right to contest compensability under Section 409.021, the carrier also loses the right to assert a defense under Sections 409.002 and 409.004.

The hearing officer's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge