

APPEAL NO. 032619-s
FILED NOVEMBER 13, 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 September 3, 2003. The hearing officer determined that respondent (claimant herein) sustained a repetitive trauma injury with a date of injury of _____; and that appellant self-insured (carrier herein) waived the right to contest the compensability of the injury. Carrier appealed these determinations on sufficiency grounds. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm in part and reverse and render in part.

Carrier contends that the hearing officer abused his discretion in failing to admit a confirmation e-mail from the Texas Workers' Compensation Commission (Commission) acknowledging that carrier filed a "cert-21." Claimant objected and the hearing officer excluded the Commission's electronic acknowledgement because it was not timely exchanged. Section 410.163(b) provides, in part, that a hearing officer shall ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made. This is a significant case in that we hold that hearing officers should take official notice of such an acknowledgement from the Commission even if it was not timely exchanged. We have required hearing officers to take official notice of essential Commission records where compliance with the 1989 Act is at issue. See Texas Workers' Compensation Commission Appeal No. 031441, decided July 23, 2003, and cases cited therein. Therefore, we hold that the hearing officer abused his discretion. See *generally* Texas Workers' Compensation Commission Appeal No. 022702, decided December 16, 2002; Texas Workers' Compensation Commission Appeal No. 030295, decided March 27, 2003. See *also* McElhaney v. City of Tyler, 926 S.W.2d 597, 602 n.2 (Tex. App.-Tyler 1996, writ denied). We retreat from Texas Workers' Compensation Commission Appeal No. 030661, decided April 30, 2003, to the extent it is contrary to this decision. We emphasize that the Commission rules regarding timely exchange of evidence will still be enforced. However, the hearing officer should take official notice of the Commission's acknowledgement of receipt of a "cert-21" offered as an exhibit at the hearing because it is, in effect, a Commission record.

Carrier contends the hearing officer erred in determining that it waived the right to contest the compensability of the claimed injury. We agree. The hearing officer determined that carrier received written notice of injury on March 13, 2003. The "cert-21" was filed on March 18, 2003. Because carrier filed the "cert-21" within the seven-day period, the hearing officer erred in concluding that carrier waived the right to contest the compensability of the injury. We reverse the hearing officer's determination that

carrier waived the right to contest the compensability of the injury and render a decision that carrier did not waive the right to contest the compensability of the injury.

Carrier asserts that claimant's work activities were not repetitive or traumatic. Carrier also contends that claimant's testimony was not credible. We have reviewed the complained-of determination regarding whether claimant sustained a repetitive trauma injury and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. The hearing officer could, and apparently did, find that this amount of writing was not substantially the same as that done by any person in the workforce. See Texas Workers' Compensation Commission Appeal No. 001367, decided July 27, 2000. Carrier contends that the hearing officer did not make findings discussing the trauma involved. We have reviewed the hearing officer's determinations and do not find them to be deficient. We conclude that the hearing officer's determination is supported by the record and is 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 reverse that part of the hearing officer's decision and order that determined that carrier waived the right to contest the compensability of the injury and we render a decision that carrier did not waive the right to contest the compensability of the injury. We affirm that part of the hearing officer's decision and order that determined that claimant sustained a repetitive trauma injury with a date of injury of _____.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (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:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

CONCUR IN THE RESULT:

Margaret L. Turner
Appeals Judge