

APPEAL NO. 091230
FILED OCTOBER 15, 2009

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 14, 2009. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury sustained on _____, extends to "cervical disc displacement at C4 through C7, degenerative hypertrophic spondylosis, bilateral degenerative facet hypertrophy at C2 through C4, annular tears at C2 through C7, cervical radiculopathy, lumbar disc protrusions at L2/3, L3/4, and L4/5 impinging on the thecal sac at L5/S1, degenerative hypertrophic spondylosis and facet joint hypertrophy from L1 through S1"; and (2) the appellant (self-insured) waived the right to contest compensability of "degenerative hypertrophic spondylosis, lumbar disc protrusions at L2/3, L3/4, and L4/5 impinging on the thecal sac at L5/S1, degenerative hypertrophic spondylosis and facet joint hypertrophy from L1 through S1 by not timely contesting the diagnoses in accordance with [Section 409.021]."

The self-insured appealed, disputing both the extent of injury and carrier waiver determinations made by the hearing officer. The respondent (claimant) responded, urging affirmance of the extent-of-injury determination.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on _____. In evidence was a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11), filed within the waiver period, which stated that the self-insured accepted "a contusion to the left knee, sprain/strain to the cervical and the lumbar, sprain to the right wrist and the left ankle."

CARRIER WAIVER

Section 409.021(a) provides that for claims based on a compensable injury that occurred on or after September 1, 2003, that not 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 and the employee in writing of its refusal to pay. Section 409.021(c) provides 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 its right to contest compensability. In Appeals Panel Decision (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.

In State Office of Risk Mgmt. v. Lawton,¹ 2009 Tex. LEXIS 629 (Tex. August 28, 2009), the Texas Supreme Court held that the interpretation given in APD 041738-s, *supra*, would eliminate the distinction between compensability and extent of injury. In Lawton, the carrier agreed the claimant had a compensable injury. Similarly, in the instant case, the self-insured agreed the claimant had a compensable injury and later disputed the extent of that injury. We find the reasoning set forth in the Lawton decision applicable to the facts in the case at issue.

Accordingly, we reverse the hearing officer's decision that the self-insured waived the right to contest compensability of "degenerative hypertrophic spondylosis, lumbar disc protrusions at L2/3, L3/4, and L4/5 impinging on the thecal sac at L5/S1, degenerative hypertrophic spondylosis and facet joint hypertrophy from L1 through S1 by not timely contesting the diagnoses in accordance with [Section 409.021]" and render a new decision that the self-insured did not waive its right to contest compensability of "degenerative hypertrophic spondylosis, lumbar disc protrusions at L2/3, L3/4, and L4/5 impinging on the thecal sac at L5/S1, degenerative hypertrophic spondylosis and facet joint hypertrophy from L1 through S1."

EXTENT OF INJURY

The hearing officer found that the "[c]ervical disc displacement at C4 through C7, degenerative hypertrophic spondylosis, bilateral degenerative facet hypertrophy at C2 through C4, annular tears at C2 through C7, cervical radiculopathy, lumbar disc protrusions at L2/3, L3/4, and L4/5 impinging on the thecal sac at L5/S1, degenerative hypertrophic spondylosis and facet joint hypertrophy from L1 through S1 arose from or flowed naturally from a compensable injury of _____." That finding is supported by sufficient evidence. The hearing officer's determination that the compensable injury of _____, extends to "[c]ervical disc displacement at C4 through C7, degenerative hypertrophic spondylosis, bilateral degenerative facet hypertrophy at C2 through C4, annular tears at C2 through C7, cervical radiculopathy, lumbar disc protrusions at L2/3, L3/4, and L4/5 impinging on the thecal sac at L5/S1, degenerative hypertrophic spondylosis and facet joint hypertrophy from L1 through S1 is supported by sufficient evidence and is affirmed.

SUMMARY

We reverse that portion of the hearing officer's determination that the self-insured waived the right to contest compensability of "degenerative hypertrophic spondylosis, lumbar disc protrusions at L2/3, L3/4, and L4/5 impinging on the thecal sac at L5/S1, degenerative hypertrophic spondylosis and facet joint hypertrophy from L1 through S1 by not timely contesting the diagnoses in accordance with [Section 409.021]" and

¹ We note that the decision in Lawton, *supra*, is not yet final until opportunities for rehearing have been exhausted.

render a new decision that the self-insured did not waive its right to contest compensability of “degenerative hypertrophic spondylosis, lumbar disc protrusions at L2/3, L3/4, and L4/5 impinging on the thecal sac at L5/S1, degenerative hypertrophic spondylosis and facet joint hypertrophy from L1 through S1.”

We affirm the hearing officer’s determination that the compensable injury of _____, extends to “[c]ervical disc displacement at C4 through C7, degenerative hypertrophic spondylosis, bilateral degenerative facet hypertrophy at C2 through C4, annular tears at C2 through C7, cervical radiculopathy, lumbar disc protrusions at L2/3, L3/4, and L4/5 impinging on the thecal sac at L5/S1, degenerative hypertrophic spondylosis and facet joint hypertrophy from L1 through S1.”

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

**DH
MANAGER
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge