

notice of refusal to pay within seven days after it receives written notice of injury has not met the statutory requisite to later contest compensability. We accordingly affirm the court of appeals' judgment.

Respondent Mary Ann Downs timely filed a claim for workers' compensation benefits after her husband's fatal heart attack. Petitioner Continental Casualty Company provided workers' compensation insurance to her husband's employer. Continental first notified Downs that it disputed the compensability of her claim forty-eight days after it received notice of the injury. The parties proceeded to a benefit-review conference and then a contested-case hearing at the Texas Workers' Compensation Commission. The hearing officer determined that Downs' husband's heart attack was not compensable and that Continental had timely contested compensability. An appeals panel affirmed that decision. Having exhausted her administrative remedies, Downs sought judicial review in the district court. The parties filed cross-motions for summary judgment, and the court granted summary judgment for Continental, affirming the Commission's decision. Downs appealed, complaining only of the determination that Continental had timely disputed compensability. The court of appeals reversed and rendered judgment in favor of Downs, and it remanded Downs' claim for attorney's fees to the district court. 32 S.W.3d at 264. It held that because Continental had not timely notified Downs of its refusal to pay benefits, it could not contest compensability. *Id.*

Continental petitioned this Court for review, contending that the court of appeals' interpretation of Labor Code §§ 409.021 and 409.022 deprives carriers of the statutory sixty-day deadline to contest compensability and imposes an additional penalty not reflected in the statutory scheme for failure to meet the seven-day pay-or-dispute deadline. It further argues that the court of appeals' interpretation is contrary

to the Commission's interpretation and application of the statutes. Downs responds that the Commission's interpretation is at odds with the language of sections 409.021 and 409.022, and that to read those provisions as Continental proposes would defeat the Legislature's express intent that workers receive either prompt payment or notice of denial of compensation claims.

As we are called upon to interpret what the parties agree are the controlling provisions of the Labor Code, we begin by reviewing the relevant principles of statutory construction. The goal of statutory construction is to give effect to legislative intent. *Kroger Co. v. Keng*, 23 S.W.3d 347, 349 (Tex. 2000); *Texas Water Comm'n v. Brushy Creek Mun. Util. Dist.*, 917 S.W.2d 19, 21 (Tex. 1996); *Monsanto Co. v. Cornerstones Mun. Util. Dist.*, 865 S.W.2d 937, 939 (Tex. 1993). Unless a statute is ambiguous, we discern that intent from the language of the statute itself. See *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865 (Tex. 1999); *RepublicBank Dallas v. Interkal, Inc.*, 691 S.W.2d 605, 607 (Tex. 1985); see also TEX. GOV'T CODE § 311.011(a) ("Words and phrases shall be read in context and construed according to the rules of grammar and common usage."). Further, we consider a statute as a whole, not its provisions in isolation. *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001); *Fitzgerald*, 996 S.W.2d at 866.

Labor Code chapter 409 sets out the procedures that employees, employers, and carriers must follow when an employee seeks workers' compensation benefits after suffering an injury on the job. TEX. LAB. CODE §§ 409.001-.044. Subchapter B, entitled "Payment of Benefits," specifies what a carrier must do, and when, after it receives written notice of an injury. *Id.* §§ 409.021-.024. Section 409.021(a)

mandates that carriers must do one of two things within seven days after receiving written notice of injury

– begin paying benefits as required by the Act or give written notice of refusal to pay benefits:

An insurance carrier shall initiate compensation under this subtitle promptly. Not later than the seventh 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 this subtitle; or

(2) notify the commission and the employee in writing of its refusal to pay

....

Id. § 409.021(a). By directing that insurance carriers “shall” either begin payment as required by the Act or send notice of refusal, the Legislature imposed a duty on carriers to take one of those actions within seven days. *See* TEX. GOV’T CODE § 311.016(2) (generally, use of the word “[s]hall” imposes a duty”); *see also* *Albertson’s, Inc. v. Sinclair*, 984 S.W.2d 958, 961 (Tex. 1999) (“We generally construe the word ‘shall’ as mandatory, unless legislative intent suggests otherwise.”).

Section 409.022 expands on what the notice of refusal must contain and what effect the notice has on further proceedings. TEX. LAB. CODE § 409.022. Section 409.022(a) explains that a carrier’s “notice of refusal to pay benefits under Section 409.021 must specify the grounds for the refusal.” *Id.* § 409.022(a). The next subsection explains that except for newly discovered evidence, a carrier is bound by the grounds for refusal it specifies in the notice of refusal: “The grounds for the refusal specified in the notice constitute the only basis for the insurance carrier’s defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence that could not

reasonably have been discovered at an earlier date.” *Id.* § 409.022(b). Thus, if a carrier timely sends its notice of refusal it may continue to investigate, but absent newly discovered evidence, has limited its defenses on the issue of compensability to the grounds for refusal specified in the notice. *Id.*

Giving effect to all the language in both sections 409.021 and 409.022, and keeping in mind the legislative goal of providing employees with either prompt payment or notice of denial of benefits, the following propositions are clear: (1) under section 409.021(a), a carrier must initiate benefits as required by the Act or file a notice of refusal; (2) under section 409.021(c), a carrier who initiates benefits may take up to sixty days to investigate or deny compensability for any valid reason; and (3) under section 409.022(b), a carrier who files a notice of refusal may investigate or deny compensability, but is limited to the grounds specified in the notice as bases for contesting compensability, except for newly discovered evidence. Therefore, a carrier that has neither initiated benefits nor filed a notice of refusal has not complied with the statutory requisite, and has failed to trigger the sixty-day period to investigate or deny compensability.

It is also clear that by mandating that carriers either initiate benefits as required by the Act or send a notice of refusal within the short seven-day deadline, the Legislature intended to provide employees with a prompt response to their benefit claims and to streamline the process to avoid early attorney involvement. *See* 1 MONTFORD ET AL., A GUIDE TO TEXAS WORKERS’ COMP REFORM 5-52 (1991) (“Section [409.021] significantly accelerates the ‘processing time’ for carriers either to initiate benefit payments . . . or to contest compensability. Promptness of the initial comp payment was considered an important reform objective since delays in initiating benefits under the prior law at times resulted in hardship upon the

employee and a need . . . for early attorney involvement.”). The Legislature further sought to encourage carriers to initiate benefit payments by providing an unfettered basis to deny compensability for up to sixty days if benefits are initiated, but limiting a carrier who refuses to pay to the ground specified in a notice of refusal, unless the carrier discovers new evidence it could not reasonably have discovered earlier. *See* TEX. LAB. CODE § 409.022(b); *see also id.* §§ 409.022(c) (stating that carrier commits administrative violation if it “does not have reasonable grounds for a refusal to pay benefits”), 415.002(18) (stating that carrier commits administrative violation if it “controverts a claim if the evidence clearly indicates liability”). Thus, interpreting the legislative scheme to require carriers to comply with the seven-day deadline to trigger the sixty-day period to investigate or deny compensability gives meaning to all the provisions of both sections 409.021 and 409.022, and strikes a balance between the injured employee’s interest in obtaining prompt payment of benefits or notice of refusal and the carrier’s interest in investigating valid grounds for refusal.

Continental’s construction, by contrast, renders meaningless: (1) the seven-day deadline of section 409.021(a); (2) the incentive of unlimited bases for denial of compensability for carriers who initiate payments as provided in the second sentence of section 409.021(c); and (3) all the limitations regarding notices of refusal in section 409.022. That construction would permit carriers to do nothing, thereby delaying benefits and eliminating the statutory requirement of early notice of denial that gives employees certain protections, and permit carriers to take up to sixty days to investigate without paying benefits or risking being bound by an earlier ground for refusal. Although the parties and the court of appeals label the consequence for failure to meet the seven-day pay-or-dispute deadline a “waiver,” that is not precisely what happens under the statutory scheme. We are presented not with a question of waiver, but of a

deadline (seven days to pay or dispute), and a consequence for failing to meet that deadline (a carrier that does nothing fails to avail itself of the sixty-day period to investigate or deny compensability). Both the deadline and the consequence are clearly chosen and clearly expressed by the Legislature.

Continental urges that this interpretation of the statute creates a penalty in addition to the potential administrative penalty set out in section 409.021(e), and that an administrative penalty is a sufficient incentive for carriers to comply with the notice requirement. Yet Continental was apparently not penalized in this case, and it has not cited any instance in which any carrier has been penalized for violating section 409.021(a). Nor has the Texas Workers' Compensation Commission as amicus curiae represented that it does or has in fact penalized carriers for failing to comply with the seven-day deadline. The administrative penalty Continental claims is a sufficient incentive is itself discretionary. TEX. LAB. CODE § 415.021 ("The commission may assess an administrative penalty against a person who commits an administrative violation."). The fact that the Commission has the discretion to impose an administrative penalty does not make the Legislature's language imposing the seven-day rule any less mandatory, or the consequences of violating the rule any less clear.

Moreover, that the Commission agrees with Continental's construction of the statute does not make that construction any more persuasive. Construction of a statute by the agency charged with its enforcement is entitled to serious consideration only if that construction is reasonable and does not contradict the statute's plain language. *Tarrant Appraisal Dist. v. Moore*, 845 S.W.2d 820, 823 (Tex. 1993); *Stanford v. Butler*, 181 S.W.2d 269, 273 (Tex. 1944). The construction advanced by the Commission is, we conclude, at odds with the statute's mandatory language. That construction has the

perverse effect of encouraging a carrier not to file a notice at all – the carrier that does nothing may investigate for sixty days and then deny compensation for any reason. And that carrier, who has violated the statute’s language, is in the same position as a carrier who initiates benefits. But the carrier that fulfills its statutory duty to send a notice of refusal and puts the wrong reason in the notice can deny compensation for that reason only. *See Vanliner Ins. Co. v. Ward*, 923 S.W.2d 29, 31-32 (Tex. App. – Texarkana 1996, no writ).

The Legislature has mandated that carriers must initiate benefits as required by the Workers’ Compensation Act or notify a claimant that it refuses to pay within seven days of when the carrier receives notice of the injury. Taking some action within seven days is what entitles the carrier to a sixty-day period to investigate or deny compensability. Because Continental neither initiated benefits nor provided grounds for refusal within this statutory deadline, it may not now contest compensability. Accordingly, we affirm the court of appeals’ judgment.

Deborah G. Hankinson
Justice

OPINION DELIVERED: June 6, 2002