APPEAL NO. 001743

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 24, 2000. The hearing officer determined that the appellant/cross-respondent (claimant) did not sustain a work-related injury, but that the claimed injury became compensable because the respondent/cross-appellant (self-insured) waived its right to contest compensability of the claimed injury; and that the claimant did not have disability. The claimant appeals the findings of no work-related injury and no disability, contending that these determinations are against the great weight and preponderance of the evidence. The self-insured replies that these determinations are correct and should be affirmed. The self-insured appeals the findings of waiver, arguing both factual and legal error. The claimant replies that this portion of the decision is correct and should be affirmed.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant worked as a school bus driver for the self-insured. She testified that on _____, while driving a special needs bus, she ran over a speed bump at a school. She said that the seat was loose and metal struck metal causing her to bounce and injure her back. She said she was not speeding at the time; did not report the condition of the bus; and continued working until October 26, 1999, when she experienced another similar incident, which is not the subject of this claim, but which did cause her pain to become worse. As a result of a visit on October 26, 1999, Dr. B, diagnosed lumbar discopathy, radiculopathy and segmental dysfunction. Two peer review doctors of the self-insured concluded that it was unlikely that going over a speed bump would have caused injury and pain as described by the claimant at her visits with Dr. B.

We note initially that the hearing officer, in Findings of Fact Nos. 2 and 3, found that the claimant did not establish that she sustained an injury while driving the school bus. In Conclusion of Law No. 3, the hearing officer found that the claimant did sustain an injury in the course and scope of her employment because the self-insured waived its right to timely dispute the compensability of the claimed injury. We reconcile these determinations by interpreting the findings of fact to be that the claimant did not prove a work-related injury, not that she did not have a back condition or injury, and by interpreting the conclusion of law to be that the injury, though not work related, became compensable by virtue of a failure to timely dispute compensability.

The claimant had the burden of proving she sustained a compensable injury as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was a question of fact for the hearing officer to decide and could be proved by her testimony alone if found credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In this case, the hearing officer commented that she did not find either

the claimant or her treating doctors credible in their assertion of a back injury caused by driving over a speed bump. The claimant argues in her appeal essentially that she did prove her case. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support this determination.

A carrier, in this case the self-insured, is generally required to dispute the compensability of a claimed injury no later than 60 days after it receives written notice of the injury, or it waives the right to do so. Section 409.021(c). In this case, the hearing officer made an unappealed finding, implied in her discussion of the evidence, that the self-insured received written notice of the injury on November 3, 1999. On November 5, 1999, a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) disputing the compensability of this claimed injury was filed with the Texas Workers' Compensation Commission. The notice was filed by Integrated Healthcare Delivery Services (IHDS). According to the self-insured's answers to interrogatories, IHDS had been the third-party administrator (TPA) for the self-insured up to February 28, 1999, when Cambridge Integrated Services (CIS) became the TPA.

The claimant argued at the CCH that because IHDS was not the TPA at the time it filed the TWCC-21, it did not act on behalf of the self-insured and, hence, no timely and valid dispute of this claim was ever filed. The hearing officer agreed and found the self-insured waived of the right to dispute. The self-insured appealed this determination, arguing that the party disputing was the self-insured, that IHDS was acting on behalf of the self-insured, and that the fact that the TPA had changed had no legal significance. We are not satisfied that the evidence established that IHDS was unrelated to CIS. *See* the self-insured's answer to interrogatories. The TWCC-21 clearly refers to this claimant and this claim. The claimant has not asserted that she was misled or prejudiced by the fact that IHDS filed the TWCC-21 or in any dealing she may have had with IHDS. Under these circumstances, we find no merit in the claimant's assertion that the TWCC-21 was not a valid dispute. The determination of the hearing officer that the self-insured failed to timely dispute this claim is reversed and a new decision rendered that the self-insured did timely dispute this claim.[1]

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

[1]The carrier's reliance on Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.) is misplaced. We have held that Williamson applies only where there is no underlying injury. Texas Workers' Compensation Commission Appeal No. 992907, decided February 10, 2000. In the case we now consider there was evidence of underlying spine pathology.

For the foregoing reasons, we affirm the determinations of no injury in the course and scope of employment and no disability. We reverse the determination that the self-insured waived the right to contest the compensability of the claimed injury and render a decision that the self-insured did not waive this right. Because the claimant did not sustain a compensable injury, the self-insured is not liable for benefits.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge