

## APPEAL NO. 002362

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 13, 2000. The hearing officer determined that: (1) respondent/cross-appellant (claimant) sustained a compensable injury; (2) he did not have disability; (3) he reported his injury timely; and (4) the appellant/cross-respondent (carrier) did not waive the right to contest the compensability of the injury. Carrier appealed the determinations regarding injury and timely notice and claimant appealed the determinations regarding disability and carrier waiver. Claimant and carrier both responded to the other's appeal, stating that the Appeals Panel should affirm the complained-of determinations.

### DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant sustained a compensable injury on \_\_\_\_\_. Carrier asserts that there was no evidence that he sustained a new injury and contended that claimant's testimony was "inconsistent" and "wandering."

It was undisputed that claimant sustained a prior compensable lumbar injury and that he had been back to work only two days when the \_\_\_\_\_, incident occurred. Claimant testified that he lifted a bucket and felt a pull in his back. Claimant said his mid and upper back hurt, but that he thought it was not serious. Claimant said that on November 30, 1999, he saw the "company doctor," Dr. G, and that Dr. G told him his back was swollen and that it could be either a new injury or a flare-up of the prior injury. Dr. G sent claimant to two weeks of physical therapy to "work it out" and to prepare for an functional capacity evaluation (FCE). Claimant said his back did not improve and he realized he had a new injury. He said he reported his new injury on \_\_\_\_\_, when he met with employer's representative and his union steward.

The applicable law regarding compensability and our standard of review are discussed in Texas Workers' Compensation Commission Appeal No. 001392, decided July 24, 2000. The matters carrier raises in its brief involved credibility and fact issues, which the hearing officer resolved. A review of the decision and order shows that the hearing officer found claimant credible regarding his mechanism of injury, despite the fact that carrier believes claimant was "inconsistent." After reviewing the evidence, we conclude that the hearing officer's determinations are 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).

Carrier contends the hearing officer erred in determining that claimant timely reported his injury. Again, the hearing officer stated that claimant was credible in his testimony. Claimant said he reported the injury on \_\_\_\_\_, which is within 30 days

of \_\_\_\_\_. We have reviewed the evidence in this case and we conclude that this determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Claimant contends the hearing officer erred in determining that carrier did not waive the right to contest the compensability of the \_\_\_\_\_, injury. Claimant asserts that carrier had notice on March 6, 2000, that claimant claimed a new injury, and that carrier did not dispute until April 26, 2000. Claimant is apparently asserting that carrier waived the right to contest compensability because it did not contest within seven days. There is no Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) in the record. A transcription indicates that a representative from (service) interviewed claimant on March 6, 2000. The last page of the document indicates that it was transcribed on April 5, 2000. There is no indication when carrier received this written transcription. Some medical records indicate that they were received by carrier, but the date stamp is not legible, though they show receipt in the year 2000. We cannot agree with claimant that the evidence shows that carrier received written notice of the claim "at least as early as" March 6, 2000, or even that carrier received written notice more than seven days before the date that claimant says carrier contested the claim. In any case, pursuant to the directive of the Texas Workers' Compensation Commission (Commission), the failure to pay or dispute within seven days does not mean that carrier waived the right to contest the compensability of the claim. See Commission Advisory 2000-07; Texas Workers' Compensation Commission Appeal No. 001963, decided September 29, 2000. We conclude that the hearing officer's determination regarding carrier waiver is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Claimant contends the hearing officer erred in determining that he did not have disability. The hearing officer determined that claimant did not lose time from work due to the \_\_\_\_\_, injury. Claimant testified that his doctors did not take him off work for the \_\_\_\_\_, upper back injury. In a December 1, 1999, report, Dr. G stated that claimant had a March 1999 injury, that he suffered continuing low back problems, that there was "no indication for a thoracic spine workup at this point," and that he would see claimant back after an FCE. A \_\_\_\_\_, FCE report indicates that claimant's date of injury was March 1, 1999, and that he underwent an FCE on December 16, 1999. A December 21, 1999, work status report signed by Dr. G indicates that, pursuant to the FCE report, claimant has permanent work restrictions, that claimant can do "light-medium" work, and that he cannot do repetitive bending at the waist. Claimant said he took Dr. G's work status report to his employer, that he was told that no work within his restrictions was available, and that he did not return to work after that point. The hearing officer apparently determined that the reason for claimant's restrictions was his March 1999 injury and not his November 1999 injury. The hearing officer resolved the conflicts in the evidence and determined what facts were established. We conclude that the hearing officer's disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm the hearing officer's decision and order.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge