

APPEAL NO. 010084

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on December 8, 2000, the hearing officer resolved the disputed issues by concluding that the appellant (claimant) sustained a repetitive trauma injury in the form of bilateral carpal tunnel syndrome (CTS); that the date of injury was _____; that the respondent (carrier) did not waive its right to dispute the compensability of the claimed injury by failing to timely contest the injury pursuant to Section 409.021; that the carrier is relieved of liability pursuant to Section 409.002 because of the claimant's failure to notify the employer pursuant to Section 409.001; and that the claimant had disability. The claimant has appealed the hearing officer's determinations concerning the timely notice and carrier waiver issues. The carrier's response urges the sufficiency of the evidence to support the timely notice determination and the policy of the Texas Workers' Compensation Commission not to follow the decision in Downs v. Continental Casualty Company, 32 S.W.3d 260 (Tex. App.-San Antonio 2000, pet. filed).

DECISION

Affirmed.

The claimant testified that he saw Dr. Z on _____, about the pain in his hands and that Dr. Z then asked about his job duties and diagnosed CTS which he related to the claimant's work; that when he returned to work on October 11, 1999, he gave the "paperwork" from Dr. Z placing him on light duty to Mr. J, the shop supervisor, and told him that his hands hurt; and that later in October 1999 he was seen by Dr. E, a neurologist, who tested him and diagnosed CTS. He said he also gave Mr. J a "paper" from Dr. E. While the claimant did not contend that the papers he gave Mr. J actually communicated that his CTS was related to his work for the employer, the claimant felt that this communication with Mr. J constituted his notice of injury to the employer because he told Mr. J that his hands hurt and said "they knew about it." Later asked when he reported the injury to the employer as being job-related, aside from the two doctor's slips, the claimant responded, "I can't remember that." The claimant could not explain why the treatment for the CTS _____ from _____, forward was paid for by an insurance carrier other than the employer's workers' compensation carrier. Mr. G, the employer's director of human resources, testified that the first notice the employer had that the claimant was asserting that his CTS was job-related was the Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) he completed on April 4, 2000, following the March 29, 2000, termination of his employment for cause.

While the evidence on the notice of injury issue was in conflict, it is the hearing officer who is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and who, as the trier of fact, resolves the conflicts and inconsistencies in the evidence and determines what facts have been proven (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)).

We do not find the challenged determination to be 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).

The claimant did not present argument on the issue of the carrier's having waived its right to contest the compensability of the claimed injury by not having done so within seven days of receiving notice of the injury and the record indicates that the claimant raised the issue to preserve it for possible judicial review. The hearing officer did not err in determining that the carrier did not waive its right to contest compensability by not initiating benefits or filing its dispute within seven days of receiving notice of injury. See Texas Workers' Compensation Commission Appeal No. 002763, decided January 24, 2001.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge