

APPEAL NO. 010696

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 February 15, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant timely reported his claimed injury to the employer; that the respondent (carrier) did not waive its right to contest the compensability of the claimed injury of _____; and that the claimant has not had disability because he did not sustain a compensable injury. The claimant appealed the hearing officer's decision on the issues of compensable injury, waiver, and disability. The carrier responded. The carrier contends that the claimant's request for appeal may not have been timely filed. The hearing officer's decision was mailed to the claimant on March 15, 2001. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the claimant is deemed to have received the hearing officer's decision on March 20, 2001. The claimant's appeal was mailed to the Texas Workers' Compensation Commission (Commission) on April 4, 2001, which was the 15th day after receipt of the hearing officer's decision, and was received by the Commission on April 6, 2001, which was not later than the 20th day after receipt of the hearing officer's decision. The claimant's appeal was timely filed. Section 410.202(a); Rule 143.3(c).

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The claimant, a job superintendent for employer, testified that he injured his lower back lifting a heavy pipe at work on _____. The claimant did not record any such injury in the daily work log report for that day and did not report his injury until after he was terminated from employment. The claimant's claim was contradicted by the testimony of several witnesses. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer stated in his decision that he did not find the claimant to be credible. As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer's decision that the claimant did not sustain a compensable injury on _____, is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer did not err in determining that the claimant has not had disability. Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The hearing officer did not err in making the date-stamped copy of the carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), which the hearing officer obtained from the claim file, a hearing officer exhibit over the objection of

the claimant. Both parties put into evidence a copy of the carrier's TWCC-21 dated November 22, 2000, in which the carrier contested the compensability of the claimant's claimed injury of _____. The TWCC-21 noted that the carrier first received written notice of the claimant's claimed injury on November 20, 2000, which is the date of the Employer's First Report of Injury or Illness (TWCC-1). It is undisputed that the carrier first received written notice of the claimed injury on November 20, 2000. The copies of the TWCC-21 put into evidence by the parties did not contain a date stamp reflecting when the Commission received the TWCC-21.

After the parties had rested, but before closing arguments, the hearing officer informed the parties that he was going to check the Commission's records to determine whether the TWCC-21 had been filed and, after doing so, he informed the parties that the claim file contained the carrier's TWCC-21 with a Commission date-received stamp of November 22, 2000. He then allowed the parties to examine that document and to make objections. Over the claimant's objections that the date-stamped TWCC-21 had not been exchanged between the parties, that both parties had rested, and that the hearing officer was taking sides, the hearing officer made the date-stamped TWCC-21 a hearing officer exhibit, explaining that he was doing so for purposes of completeness of the record as to what the Commission's records actually showed and to prohibit a misrepresentation of what had or had not been filed with the Commission. The claimant asserts on appeal that the hearing officer's action in making the date-stamped TWCC-21 a hearing officer exhibit over his objection is not permitted by the 1989 Act or Commission rules.

Section 410.163(b) provides, in part, that a hearing officer shall ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made. Rule 142.2 provides, in part, that the hearing officer is authorized to request additional evidence. The Appeals Panel has previously addressed the issue raised by the claimant. In Texas Workers' Compensation Commission Appeal No. 941171, decided October 17, 1994, the Appeals Panel stated:

We further agree that the hearing officer erred in excluding the TWCC-21 based upon an exchange objection. The TWCC-21 is a document, like a claimant's claim form, that arguably outlines the jurisdiction of the [Commission]. As such, it is not merely "evidence" but defines the permissible grounds upon which a carrier may proceed in its defense of the claim. See Section 409.022. As such, if not tendered by either party when a dispute is raised as to its timeliness or sufficiency, it should be included by the hearing officer as part of his or her mandate to fully develop the record and ensure the preservation of the rights of the parties in accordance with Section 410.163.

A decision squarely on point is Texas Workers' Compensation Commission Appeal No. 002287, decided November 13, 2000, in which a hearing officer, after both parties had rested, but before the close of the hearing, retrieved a file-stamped copy of the TWCC-21 from the claim file and made it a hearing officer exhibit over the objection of the claimant

in that case. At issue was whether the self-insured employer had waived the right to contest compensability of the claimed injury. The Appeals Panel stated:

While it would have been better practice for the employer to have offered an exhibit establishing the date that the contest of compensability was filed, the hearing officer was acting within his authority in obtaining this information. Section 410.163(b) states that a hearing officer “shall ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made.” In order to resolve a waiver issue, a hearing officer must know the date written notice of the alleged injury was received and the date of the dispute. Accordingly, the hearing officer was permitted to develop the record to include information essential to the resolution of the issue before him. [Appeal No. 941171].

The hearing officer did not err in determining that the carrier did not waive the right to contest the compensability of the claimant’s claimed injury of _____. Section 409.021(c).

The hearing officer’s decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O’Neill
Appeals Judge