

APPEAL NO. 011258
FILED JULY 16, 2001

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 commenced on April 19, 2001, and concluded on May 7, 2001. The issues before the hearing officer were:

1. Was the [appellant] Claimant injured in the course and scope of his employment when involved in a motor vehicle accident [MVA] on _____?
2. Does the Claimant have disability as a result of this compensable injury, and if so, for what period?
3. Has the [respondent] Carrier waived the right to dispute the compensable injury by not contesting the injury in accordance with the Texas Labor Code Ann. Section 409.021?

With regard to those issues, the hearing officer inferentially determined that the claimant was in the course and scope of his employment when he was involved in an MVA on _____, but that the claimant did not sustain an injury in the accident and did not have disability. The inferred finding that the claimant was in the course and scope of his employment has not been appealed and has become final. The hearing officer also determined that the carrier did not waive the right to contest compensability of the claim pursuant to Section 409.021.

The claimant appealed, emphasizing the severity of the MVA and that the treating doctor found that the claimant had suffered injuries and had disability. The claimant also appealed the hearing officer's determination on the carrier's timely contest of compensability, citing Downs v. Continental Casualty Company, 32 S.W.3d 260 (Tex. App.-San Antonio, 2000, pet. pending). The carrier responds, urging affirmance.

DECISION

Affirmed.

The great majority of this case, which was tried in conjunction with Mr. MC case, a coworker of the claimant, dealt with whether the claimant and MC were in the course and scope of their employment at the time of the MVA. The hearing officer's determination on that point has not been appealed. The claimant was driving his own pickup truck, which rolled over when it was struck by another vehicle on _____. The police report indicates that the claimant was not injured, and the claimant testified that he did not go to the hospital or a doctor that day because he "didn't feel anything." The claimant went to work on his next scheduled workday, Monday, December 18, 2000, and worked through Wednesday, December 20, 2000, when he then sought treatment from Dr. H, a chiropractor, who, in a report of that date, diagnosed some 17 separate diagnostic code injuries, and took the claimant off work. Dr. H's reports indicate that the claimant is being

treated with chiropractic care. The claimant was initially seen daily, and, as of February 26, 2001, was being seen three times a week. The claimant has continued to be off work since December 20, 2000.

The hearing officer obviously did not find Dr. H's reports that the claimant had suffered an injury and had disability persuasive, citing the fact that the claimant did not seek medical attention after the accident and had returned to his regular duties on December 18, 2000. The hearing officer weighed the credibility of the evidence and is the sole judge of the weight and credibility to give to the evidence, including medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The claimant, in his appeal, expresses puzzlement that the hearing officer did not discuss "the existence of an injury or disability. Instead, all of the discussion concerns whether Claimant was in the course and scope of his employment at the time of the collision." We note that the great majority of the relatively lengthy CCH dealt with the course and scope issue, and other than ask the claimant what parts of his body were injured and whether he could return to work, there was little focus on the injury and disability issues.

Regarding the timely contest of compensability issue, the Employer's First Report of Injury or Illness (TWCC-1) indicates that the date of the carrier's first written notice of injury was January 5, 2001; and in evidence is the carrier's Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) dated January 12, 2001, but apparently not filed with the Texas Workers' Compensation Commission (Commission) until January 22, 2001. The claimant contends that the carrier's contest of compensability, pursuant to Downs, *supra*, was not timely. The Commission has declined to follow Downs until it becomes final upon the completion of the judicial process. TWCC Advisory No. 2000-07 issued August 28, 2000; Texas Workers' Compensation Commission Appeal No. 010003, decided February 12, 2001. Therefore, the hearing officer did not err in failing to apply Downs in accordance with Commission policy.

The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge