

APPEAL NO. 011488
FILED AUGUST 1, 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 held on June 4, 2001. The hearing officer determined that (1) the appellant's (claimant) compensable injury of _____, did not extend to include her lumbar area; and (2) the claimant did not have disability resulting from the compensable injury sustained on _____. The claimant appeals the determinations on sufficiency grounds. The respondent (carrier) asserts that the hearing officer's decision has become final because the claimant's representative, not the claimant, signed the appeal. Alternatively, the carrier urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Jurisdiction Issue

The carrier contends that the claimant's appeal should be dismissed for want of jurisdiction, because it was not signed by the claimant, or an authorized representative of the claimant. Section 401.011(37) defines "representative" as a person, including an attorney, authorized by the Texas Workers' Compensation Commission (Commission) to assist or represent an employee, a person claiming a death benefit, or an insurance carrier in a matter under this subtitle that relates to the payment of compensation. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 150.3(a)(3) (Rule 150.3(a)(3)) provides, in part, that a representative is authorized to provide services in workers' compensation matters if a person who is neither an adjuster nor an attorney files with the Commission a written power of attorney or written authorization from the claimant allowing that person access to confidential records.

The appeal, entitled "Claimant's Request for Review," is signed by Mr. O of the Injured Workers Assistance Center, and contains no written power of attorney or written authorization from the claimant. We note, however, that Mr. O represented the claimant at the CCH and signed in as the claimant's representative. There was no complaint by the carrier to this representative at the CCH or to his status as such. Rule 150.3(b) provides that a representative who fails to comply with the 1989 Act or Commission rules "may be subject to sanctions, including suspension, as provided by the [1989] Act, § 2.09(f) [since codified as Section 402.072] and § 10.07(d) [since codified as Section 415.023]." Thus, the penalty or sanction for failing to comply with the 1989 Act or Commission rules runs against the representative rather than the claimant. Accordingly, the failure to include a written power of attorney or other authorization with the appeal will not result in a dismissal of the appeal for lack of jurisdiction. Our decision in Texas Workers' Compensation Commission Appeal No. 991547, decided September 2, 1999, is directly in point.

The carrier cites Texas Workers' Compensation Commission Appeal No. 950940, decided July 21, 1995, as precedent in support of its position. We distinguish that case from the instant case for several different reasons: the claimant's appeal in Appeal No. 950940 was untimely, the claimant in Appeal No. 950940 did "not know that the friend is filing" the appeal, and the person filing the appeal in Appeal No. 950940 never met the definition of, and had not acted as, the claimant's representative at the CCH. Our decision in Appeal No. 950940, therefore, does not require dismissal of this case for lack of jurisdiction.

Compensable Injury

The hearing officer did not err in determining that the claimant's compensable injury of _____, did not extend to include her lower back. The claimant asserted that she injured her lower back on _____, simultaneously with a compensable injury to her left knee. The claimant had the burden to prove that she sustained damage or harm to her lower back on _____, arising out of and in the course and scope of her employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer could infer from the evidence that the claimant did not injure her lower back while moving a filing cabinet on July 13, 2000, as was claimed. The hearing officer's determination, therefore, is 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).

Disability

The hearing officer did not err in determining that the claimant did not have disability resulting from the compensable left knee injury of _____. The claimant asserts that she had disability from October 4, 2000, through the date of the hearing, as a result of her compensable left knee injury and lower back injury. Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 000303, decided March 29, 2000. The hearing officer could infer from the evidence that the claimant's inability to obtain or retain employment at her preinjury wage from October 4, 2000, through the date of the hearing resulted from her noncompensable low back injury, rather than her compensable left knee injury. 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.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge