

APPEAL NO. 011563
FILED AUGUST 22, 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 was held on June 14, 2001. The hearing officer determined that (1) the appellant (claimant) did not sustain a compensable injury on _____, or _____; (2) the respondent (carrier) did not waive its right to contest compensability; (3) the claimant did not have disability; and (4) the carrier is not relieved from liability under Section 409.002, because of the claimant's failure to timely notify her employer pursuant to Section 409.001. The claimant appeals the injury, disability, and timely dispute determinations on sufficiency grounds. The carrier urges affirmance. The hearing officer's notice determination was not appealed and is, therefore, final. Section 410.169.

DECISION

Affirmed.

Compensable Injury

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____, or _____. The claimant had the burden to prove that she sustained damage or harm to her back, 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)). Upon review of the evidence, we cannot conclude that the hearing officer's determination is 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 (Tex. 1986).

Timely Dispute by Carrier

The hearing officer did not err in determining that the carrier did not waive its right to contest compensability of the claimed injury of _____. Pursuant to Section 409.021(c), a carrier has 60 days from the receipt of written notice of a claimed injury before its right to contest compensability is waived. See *also* Texas Workers' Compensation Commission Advisory No. 2000-07, issued August 28, 2000; Texas Workers' Compensation Commission Appeal No. 001214, decided July 20, 2000. The carrier's denial of a claim shall provide a full and complete statement describing the carrier's action, its reasons for such action, and sufficient claim-specific information to enable the employee to understand the carrier's position or action taken on a claim. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.2(f)

(Rule 124.2(f)). The evidence establishes that notice of the claimed injury was sent to the carrier on March 2, 2001. The evidence further establishes that the carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) on March 12, 2001, denying an “injury in course and scope of employment on or about 1/3/01 or 1/31/01, or any time during the employment from 10/4/00 through 2/28/01.” In view of the evidence presented, we cannot conclude that the hearing officer’s determination that the carrier did not waive the right to dispute compensability of the claimed injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Disability

The hearing officer did not err in determining that the claimant did not have disability from September 30, 2000, through January 22, 2001. The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge