

APPEAL NO. 011741  
FILED SEPTEMBER 12, 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 July 10, 2001. The hearing officer determined that the appellant (claimant) did not sustain an injury on \_\_\_\_\_, and, further, that the claimant did not sustain a compensable injury. The hearing officer additionally determined that the claimant, without good cause, failed to timely report her injury to the employer thereby relieving the respondent (carrier) of liability and that the carrier timely contested the compensability of the claimant's claimed injury. The claimant has appealed, asserting that applying Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1(c) and 102.5 (Rules 124.1(c) and 102.5) the carrier was deemed to have received written notice of the injury from the Texas Workers' Compensation Commission (Commission) and failed to timely contest compensability. Additionally, the claimant argues that she did incur an injury, that it was a compensable injury, and that she did inform her employer of the injury within 30 days. The carrier urges in response that the claimant failed to carry her burden of proof at the hearing and requests that the decision and order of the hearing officer be upheld.

DECISION

Affirmed.

We note at the outset that the hearing officer's decision fails to reflect that Hearing Officer Exhibit No. 5, a Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21), is part of the record.

The claimant testified that while working as a packer for the employer, she injured her left shoulder in the process of lifting a box to stack on a pallet on \_\_\_\_\_. The claimant further stated that the pain in her left shoulder radiated to her lower back, knees, and ankles. At the hearing, the claimant also asserted that the injury sustained on \_\_\_\_\_, caused pain in her legs and problems with her bladder and heart as well as with her respiratory system. She said that she told her supervisor of her injury twice on the day it occurred and subsequently told a senior human resources coordinator. The claimant further testified that she filled out an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) on February 22, 2000, and filed it with the Commission on February 23, 2000. A subsequent TWCC-41 dated February 22, 2000, which differed in some respects from the previous TWCC-41, was filed by the claimant with the Commission on August 14, 2000. The carrier contends that it did not receive written notice of the injury until August 14, 2000, when it received a copy of the latter TWCC-41. The carrier filed a TWCC-21 with the Commission on September 7, 2000, disputing the claim. The only medical evidence entered at the hearing was a Work Status Report (TWCC-73) completed by Dr. C, dated October 12, 2000, with a diagnosis of sprain/strain of the left shoulder (grade II).

Rule 124.1(a) provides that written notice of injury, as used in Section 409.021, consists of “the insurance carrier’s earliest *receipt* [emphasis added] of (1) the Employer’s First Report of Injury as described in § 120.2 of this title (relating to Employer’s First Report of Injury); (2) the notification provided by the Commission under subsection (c) of this section; or (3) if no Employer’s First Report of Injury has been filed, any other communication regardless of source, which fairly informs the carrier of the name of the injured employee, the identity of the employer, the approximate date of the injury and information which asserts the injury is work related.”

The claimant argues on appeal, relying on Rules 124.1(c) and 102.5, and Texas Workers' Compensation Commission Appeal No. 970147, decided February 21, 1997, that the carrier is deemed to have received written notice of the injury on March 2, 2000. Rule 124.1(c) provides that the Commission shall furnish written notice to the carrier when a source other than the carrier reports an injury which may cause the employee eight or more days of disability. Rule 102.5 provides that written communications sent by the Commission, which require the recipient to perform an action by a specific date after receipt, are deemed received five days after the date mailed, unless the great weight of the evidence indicates otherwise. The case cited and relied upon by the claimant differs from the facts at issue. In Appeal No. 970147, *supra*, the record contained additional evidence that the written notice was mailed by the Commission. No such evidence was presented in this case.

We have held that a claimant has the burden of proving when the first written notice of an injury was received by the carrier. Texas Workers' Compensation Commission Appeal No. 981398, decided August 3, 1998. Based on our review of the record, we conclude that there is sufficient evidence to support a determination that the carrier timely contested compensability because the claimant failed to prove that the carrier received written notice of the injury before August 14, 2000.

The claimant had the burden to prove that she sustained the claimed injury, that she provided timely notice of the injury to her employer, and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. The same is true for the issue of timely notice. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.).

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the

conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The hearing officer makes clear that he did not find the claimant's testimony to be credible and truthful. As an appellate reviewing tribunal, 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.

The true corporate name of the insurance carrier is **AIU INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL  
HIGGS, 8144 WALNUT HILL LANE #1600  
DALLAS, TEXAS 75231.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Michael B. McShane  
Appeals Judge