

APPEAL NO. 011865  
FILED SEPTEMBER 14, 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 July 18, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury to his right shoulder on \_\_\_\_\_; that the respondent (carrier) is relieved of liability under Section 409.002 because the claimant failed to timely notify his employer of an injury under Section 409.001; that the claimant has not had disability; and that the carrier has not waived its right to contest compensability of the claimed injury under Section 409.021. The claimant appealed and the carrier responded.

DECISION

The hearing officer's decision is affirmed.

A "compensable injury" is defined in Section 401.011(10). The claimant had the burden to prove that he was injured in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Conflicting evidence was presented at the CCH on the issues of whether the claimant sustained a right shoulder injury in the course and scope of his employment on \_\_\_\_\_, and whether the claimant timely reported his claimed injury of \_\_\_\_\_, to his employer under Section 409.001. The hearing officer resolved the conflicts in the evidence and found that the claimant did not sustain an injury in the course and scope of his employment on \_\_\_\_\_, and that he did not report the claimed injury of \_\_\_\_\_, to the employer within 30 days after that date. The hearing officer determined that the claimant did not sustain a compensable injury on \_\_\_\_\_, and that the carrier is relieved of liability under Section 409.002 because the claimant failed to timely notify the employer of the claimed injury of \_\_\_\_\_. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder 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 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.

Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The hearing officer found that the carrier first received written notice of the claimed injury on November 7, 2000, and disputed the compensability of the injury on November 13, 2000. The hearing officer concluded that the carrier had not waived the right to contest compensability of the claimed injury under Section 409.021. The hearing officer's determination on the waiver issue 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's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge