

APPEAL NO. 011907  
FILED OCTOBER 1, 2001

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 25, 2001, a contested case hearing (CCH) was held. With respect to the sole issue before her, the hearing officer determined that respondent (claimant) sustained a compensable injury on \_\_\_\_\_. The insurance carrier has accepted liability in this case; however, the appellant (employer) has contested compensability pursuant to Section 409.011(b)(4) and, therefore, is the party of record rather than carrier, who was also present at the CCH. The employer appealed, contending that claimant did not sustain a compensable injury. The appeals file did not contain a response from claimant.

DECISION

We affirm.

We have reviewed the complained-of determination and conclude that the issue presented a fact question for the hearing officer. All of the matters raised by employer involved fact issues for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination that the claimant sustained a compensable injury on February 15, 2001, 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).

We note that the employer makes reference in his appeal to the hearing officer's denial of a request for a subpoena duces tecum for the purpose of obtaining an x-ray, which allegedly would have revealed a prior fracture. To the extent that this was appealed, the evidence reflects that the hearing officer, in an order dated June 20, 2001, found no good cause to issue the subpoena and denied the employer's request. The record indicates that the employer did not raise the issue of the subpoena duces tecum at the hearing. Therefore, any possible error was waived.

We affirm the hearing officer's decision and order.

No registered agent information is included in this case pursuant to House Bill 2600, which amended Section 410.164, effective June 17, 2001, as carrier accepted liability and was not a party at the hearing.

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge