

APPEAL NO. 012216
FILED OCTOBER 31, 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 20, 2001. With regard to the only issue before him, the hearing officer determined that the respondent (claimant) had disability from October 25, 2000, through the date of the CCH.

The appellant (carrier) appeals, summarizing the rather voluminous medical evidence, asserting that because the hearing officer failed to file his decision with the Texas Workers' Compensation Commission's Division of Hearings within 10 days as provided by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(c) (Rule 142.16(c)), the hearing officer's decision is without effect, and that the claimant had the ability to obtain and retain employment at his preinjury wage, that the claimant may have sustained an intervening injury, and that the claimant had returned to work in a position commensurate with his ability, based on a surveillance videotape. The claimant responds, urging affirmance.

DECISION

Affirmed.

Regarding the carrier's appeal of the hearing officer's failure to file his decision with the Division of Hearings within 10 days, as required by Rule 142.16(c), the Appeals Panel early on addressed that situation in Texas Workers' Compensation Commission Appeal No. 92456, decided October 8, 1992, citing the Texas Supreme Court case of Lewis v. Jacksonville Building and Loan Association, 540 S.W.2d 307 (Tex. 1976), which held that the hearing officer's time limits do not go to the essence of the merits and thus are not mandatory. We hold the carrier's appeal on this ground to be without merit.

Regarding disability, the hearing officer weighed the credibility and inconsistencies in the evidence, and the hearing officer's determination on the issue is not against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

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

**ROEN & AUTRY
710 FIRST STATE BANK
400 W. 15TH STREET
AUSTIN, TEXAS 78701-1647.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge