

APPEAL NO. 012232
FILED OCTOBER 30, 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 August 3, 2001. The hearing officer resolved the disputed issues by concluding that the appellant (claimant) did not sustain a compensable injury on _____, and therefore did not have disability; that the claimant did timely notify her employer of a claimed injury; and that because there was no compensable injury, the respondent (carrier) did not waive the right to dispute compensability by failing to timely and adequately file a dispute pursuant to Sections 409.021 and 409.022. The claimant appeals, arguing that it is undisputed that she sustained an injury. The claimant additionally argues that the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) disputing her claim was not filed timely by the self-insured or with the required specificity. The hearing officer's determination that the claimant timely reported the alleged injury has not been appealed and has become final. The carrier, in its response, contends that the evidence supports the decision of the hearing officer.

DECISION

Affirmed as modified.

On _____, the claimant slipped and fell while she was walking in the walkway to the entrance of the office building where her employer was located. The claimant testified that she injured her knee when she fell and that a week later her low back began to hurt. The claimant testified that she was self-treating with ice packs and over-the-counter medication until the pain became unbearable. She then sought medical care from Dr. R, on February 28, 2001, who diagnosed "left knee internal derangement" and "lumbar intervertebral disc syndrome," taking her off work effective March 1, 2001. The claimant's supervisor prepared a report dated _____, which documented a slipping incident with no injury indicated and that the claimant returned to work that same day. There was also testimony and evidence presented that the claimant did not complain to her employer about her alleged injury until about four months after she had fallen.

There is sufficient evidence to support the hearing officer's determination that the claimant did not sustain an injury and the claim is not compensable. There was conflicting evidence whether the claimant sustained an injury when she fell. Section 401.011(26) defines "injury" as damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The hearing officer weighed the credibility and inconsistencies in the evidence and the hearing officer's determination on the issue is not so 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).

Further, the hearing officer did not err in deciding that the claimant did not have disability. Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16). 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 or unjust.

The carrier filed a TWCC-21 contesting the claim on March 13, 2001, stating "Carrier denies that current treatment is related to injury of _____/The IW did not seek treatment or miss time until 4 months after reported injury. Carrier denies disability as being related to injury of _____." The claimant contends the carrier has waived the right to dispute the compensability of the claimed injury because the carrier's TWCC-21 is insufficient in disputing the compensability of the claimed _____, injury. The hearing officer did not err in deciding that the carrier did not waive the right to contest the compensability of this claim. The hearing officer made a factual determination that the contestations by the carrier met the requirements of Section 409.021. The hearing officer's determination on the issue was 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 (Tex. 1986). In any event, these questions are mooted by our affirmance of the hearing officer's determination that there was no compensable injury. Where there is no injury to the claimant, a carrier does not waive the right to contest compensability of the claim for failing to properly contest compensability of the claim within 60 days of receiving written notice. Continental Casualty Company v. Williamson, 971 S.W.2d 108, 110 (Tex. App.-Tyler 1998, no pet.)

Finally, we note that Claimant's Exhibit No. 5 was identified as, "Updated Medical Records from Dr. R." These records were admitted without objection, however, the hearing officer failed to list the exhibit in his Decision and Order. Accordingly, we modify the Decision and Order to reflect Claimant's Exhibit No. 5, Updated Medical Records of Dr. R.

The hearing officer's decision and order are affirmed as modified.

The true corporate name of the insurance carrier is **ATLANTIC MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is as follows:

**NICHOLAS PETERS
12801 NORTH CENTRAL EXPRESSWAY, SUITE 100
DALLAS, TEXAS 75243-1732.**

Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge