

APPEAL NO. 020010
FILED FEBRUARY 22, 2002

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 December 12, 2001. Appellant (carrier) appeals the hearing officer's determinations that respondent (claimant) sustained a compensable injury on _____; that claimant had disability resulting from the injury sustained on _____, from July 14, 2000, through the date of the hearing; and that claimant is not barred from pursuing benefits because of an election to receive benefits under his group health insurance policy. There is no response from claimant contained in our file.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant sustained a compensable injury. We have reviewed this complained-of determination and conclude that the issues involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination 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).

Carrier contends that claimant is barred from pursuing benefits because of an election of remedies. We note that in Valley Forge Insurance Company v. Austin, No. 05-00-01915-CV (Tex. App.-Dallas), opinion issued December 20, 2001 (not yet published), the court held, that the common-law, election-of-remedies affirmative defense is not applicable to present workers' compensation cases because of the addition of language in Section 409.009 of the 1989 Act. We conclude that the hearing officer did not err in concluding that there was no election of remedies and that his determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. See Austin; Texas Workers' Compensation Commission Appeal No. 970601, decided May 16, 1997. See *also* Texas Workers' Compensation Commission Appeal No. 012964, decided January 14, 2002.

Carrier also appeals the finding of disability on the basis that claimant did not sustain a compensable injury. Having affirmed the findings of a compensable injury and no election of remedies, we also affirm the finding of disability.

We affirm the hearing officer's decision and order.

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

**JIM ADAMS, ATTORNEY
450 GEARS ROAD, SUITE 500
HOUSTON, TEXAS 77067.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge