

APPEAL NO. 020472
FILED APRIL 8, 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 (CCH) was held on February 7, 2002. The hearing officer determined that the respondent (carrier) did not waive the right to dispute compensability of the claimed injury; that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease or otherwise on _____, _____, or on any other relevant date; that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under a group health insurance policy; that the claimant did not have disability resulting from an alleged injury on _____, _____, or on any other relevant date; and that the claimant's treating doctor is Dr. C. The claimant appealed, urging that the hearing officer erred in determining that the carrier had not waived the right to dispute compensability; that the claimant did not have a compensable injury and disability; and that the claimant's treating doctor is Dr. C. The carrier filed a response, urging affirmance.

The determination that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under a group health insurance policy has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant testified that she was employed as a security guard for the employer and that her job duties included walking and running on gravel and inclined surfaces. The claimant testified that on _____, while she was climbing stairs, her body "shut down" and that she sustained an injury to her lower back, legs, and feet when she fell on a stair rail. The claimant testified that she sought emergency medical treatment on _____; that three days after her injury, she was treated by her family doctor, Dr. C; that Dr. C's office personnel informed her that her injuries were work related; that she filled out an accident report with her employer on August 28, 2001; and that she has not worked from _____, to the date of the CCH because her whole body is in pain. The claimant states that she changed treating doctors from Dr. C to Dr. E because Dr. C did not accept workers' compensation claims. The claimant testified that she did not know her injury was work related when she first saw Dr. C and that she used her group health insurance policy to cover medical payments. She also used her group health insurance policy with Dr. E because the carrier refused to pay for an MRI of the lumbar spine.

The hearing officer did not err in determining that the carrier has not waived the right to dispute compensability of the claimed injury. Section 409.021(c) provides that if an insurance carrier does not contest the compensability of an injury on or before the 60th day

after the date on which the carrier is notified of the injury, the carrier waives its right to contest compensability. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1(a)(3) (Rule 124.1(a)(3)) provides, in part, that written notice of injury, as used in Section 409.021, consists of "any other communication, regardless of source, which fairly informs the carrier of the name of the injured employee, the identity of the employer, the approximate date of the injury and information which asserts the injury is work related." The hearing officer determined that the Employer's First Report of Injury or Illness (TWCC-1) dated August 28, 2001, reflects the date of the first written notice to the carrier. We have held that the 60-day time period for contesting compensability begins on the date the carrier receives written notice of the claimed injury. Texas Workers' Compensation Commission Appeal No. 952232, decided February 8, 1996. The evidence sufficiently supports the hearing officer's determination that the carrier did not waive the right to dispute compensability of the claimed injury.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury in the form of an occupational disease or otherwise on _____, _____, or on any other relevant date. Without a compensable injury, the claimant would not have disability, as defined by Section 401.011(16). The claimant had the burden to prove that she was injured in the course and scope of her employment and that she had disability. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Appeal No. 950084. We conclude that the challenged findings are supported by sufficient evidence and not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Since we are affirming the hearing officer's decision that the claimant did not have a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The hearing officer did not err in determining that the claimant's treating doctor is Dr. C. Rule 126.9(c) states that the first doctor who provides health care to an injured employee shall be known as the injured employee's initial choice of treating doctor. Review of the record does not reflect that the claimant filed an Employee's Request to Change Treating Doctors (TWCC-53) with the Texas Workers' Compensation Commission to change treating doctors from Dr. C to Dr. E. The evidence sufficiently supports the hearing officer's determination that the claimant's treating doctor is Dr. C.

The decision and order of the hearing officer are affirmed.

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

**CT CORPORATION SYSTEMS
350 N. ST. PAUL
SUITE 2900
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Terri Kay Oliver
Appeals Judge