

APPEAL NO. 020978  
FILED MAY 30, 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 March 25, 2002. The hearing officer determined that (1) the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; (2) the claimant did not have disability; (3) the claimant's average weekly wage (AWW) was \$240.00; and (4) the respondent (carrier) owes accrued medical benefits between January 21, 2002 and February 4, 2002, pursuant to Section 409.021 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3), but the claimant is not entitled to benefits before January 21, 2002, because he did not have an injury in the course and scope of his employment. The claimant appeals the hearing officer's injury, disability, and benefits determinations on factual and legal grounds. The carrier urges affirmance. The hearing officer's AWW determination was not appealed and is, therefore, final. Section 410.169.

DECISION

Affirmed in part as reformed; reversed and rendered in part.

**INJURY AND DISABILITY**

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on \_\_\_\_\_, and did not have disability. The injury determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's injury determination is 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). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability. Section 401.011(16). We note also that the hearing officer found that the alleged injury did not cause the claimant to lose the capacity to earn wages.

**CARRIER LIABILITY FOR BENEFITS**

We would first note that the finding of fact that the "Carrier did not timely contest compensability" is not strictly correct. The finding is reformed to state that the carrier "did not contest compensability by the seventh day after receiving written notice of injury." The hearing officer erred in determining that the carrier is liable for accrued medical benefits only between January 21, 2002, and February 4, 2002, and not for benefits before January

21, 2002. The claimant asserts legal error citing Rule 124.3(a)(1) and (2). Rule 124.3(a) provides, in relevant part:

- (a) Except as provided in subsection (b) of this section, upon receipt of written notice of injury as provided in §124.1 of this title (relating to Notice of Injury) the carrier shall conduct an investigation relating to the compensability of the injury, the carrier's liability for the injury, and the accrual of benefits. If the carrier believes that it is not liable for the injury or that the injury was not compensable, the carrier shall file the notice of denial of a claim (notice of denial) in the form and manner required by §124.2 of this title (relating to Carrier Reporting and Notification Requirements).
  - (1) If the carrier does not file a notice of denial by the seventh day after receipt of the written notice of injury, the carrier is liable for any benefits that accrue and shall initiate benefits in accordance with this title.
  - (2) If the carrier files a notice of denial after the seventh day but before the 60th day after receipt of written notice of the injury, the carrier is liable for and shall pay all benefits that had accrued and were payable prior to the date the carrier filed the notice of denial and only then is it permitted to suspend payment of benefits.

The parties stipulated that the carrier received written notice of the claimed injury on January 21, 2002. The carrier disputed the claimed injury on \_\_\_\_\_, after the seventh day but before the 60th day after receipt of written notice. In the "Statement of the Evidence" portion of the decision, the hearing officer states, "The Rules provide that Carrier is liable for accrued benefits *from the time they receive written notice* until they properly dispute the claim." (Emphasis added.) We disagree.

In Texas Workers' Compensation Commission Appeal No. 002220-S, decided November 7, 2000, we held that under the provisions of Rule 124.3, cited above, a carrier is liable for all benefits that accrue prior to the filing of a dispute, including those prior to the carrier's receipt of written notice of the injury. Additionally, we have said that a carrier is liable for accrued benefits, in accordance with Rule 124.3, without regard to the ultimate determination of compensability of the claimed injury. Texas Workers' Compensation Commission Appeal No. 012101-s, decided October 22, 2001. The entitlement to medical benefits is set forth in Section 408.021 and such benefits can be said to have accrued when the statutory requirements are met. In view of our prior holdings, the hearing officer erred, as a matter of law, in determining that the carrier is liable for accrued medical benefits

between January 21, 2002, and February 4, 2002, but not for benefits before January 21, 2002.

The hearing officer's decision and order are affirmed with regard to the injury and disability determinations. The hearing officer's decision and order are reversed with regard to the carrier's liability for accrued benefits, and a new decision rendered that the carrier is liable for all medical benefits that accrued and were payable prior to \_\_\_\_\_. Income benefits are not due because the hearing officer factually found that the claimant did not lose the ability to earn wages due to the alleged injury.

The true corporate name of the carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge