APPEAL NO. 021246
FILED JULY 1, 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 April 23, 2002. The hearing officer resolved the disputed issues by concluding that the respondent (claimant) did sustain a compensable injury in the course and scope of her employment on _____; that the claimant has disability beginning on _____, and continuing through the date of the CCH; and that the appellant (self-insured) has waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021. The self-insured appeals, arguing that the determinations of the hearing officer are against the great weight of the credible evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified she injured her back while assisting others in lifting a cadaver. The claimant's treating doctor, in correspondence dated October 17, 2001, opined that the claimant's injuries were a direct result of her compensable injury. The treating doctor noted that an MRI performed prior to the compensable injury was negative while the MRI performed on October 15, 2001, showed two bulging discs at L3-4 and L5-S1. The claimant testified that she did not work from _____, until February 11, 2002, when she began working as a waitress. She further testified that she only earns about half as much as a waitress as she did while working for the self-insured.

The carrier argues that it timely disputed the claim on December 12, 2001, because it first received written notice of the claim on October 17, 2001. The 1989 Act in Section 409.021(c) and (d) specifies how and when a contest must be made: existing defenses must be raised by the carrier within 60 days of notice of the claim; other defenses not reasonably discoverable earlier may be raised by the carrier when discovered. A defense to liability is lost if not timely and expressly contested as required by Section 409.021(c) of the 1989 Act. The hearing officer correctly found that both the employer and the self-insured received notice of claimant's injury on _____. In Texas Worker's Compensation Commission Appeals Panel No. 941387, decided December 2, 1994, we held that no distinction exists between the self-insured as carrier and as employer for determining when written notice was received. The evidence reflected that the self-insured received written notice in the form of a "Employer's First Report of Injury or Illness [TWCC-1]" on _____, the date it was prepared. The self-insured did not dispute the claim until December 12, 2001, which was more than sixty days after written notice was received. The self-insured did not allege a defense existed which was not reasonably discoverable earlier.

There was conflicting evidence presented on the factual questions of whether the claimant had a compensable injury, what the date of injury was, whether there was disability, and whether the carrier waived its right to contest compensability.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). In the present case, the hearing officer specifically noted that he found the claimant credible and persuasive. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the factual findings of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

LJ
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Michael B. McShane
Appeals Judge

CONCUR:

_____
Robert E. Lang
Appeals Panel
Manager/Judge

_____
Philip F. O'Neill
Appeals Judge