

APPEAL NO. 021479
FILED JULY 18, 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 May 6, 2002. With respect to the issues before him, the hearing officer determined that (1) the compensable injury of _____, does not include an injury to the cervical spine; (2) the respondent (carrier) did not waive the right to contest the compensability of the claimed injury to the cervical spine by not timely contesting the injury in accordance with Section 409.021; (3) the carrier is not relieved from liability under Section 409.004, because of the appellant's (claimant) failure to file an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) with the Texas Workers' Compensation Commission within one year of the date of injury; (4) the claimant is not barred from pursuing Texas workers' compensation benefits because of an alleged election to receive benefits under a group health insurance policy; and (5) the claimant did not have disability from the compensable injury of _____. The claimant appeals the extent-of-injury, disability, and waiver determinations on sufficiency grounds. In its response, the carrier urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the compensable injury does not include the cervical spine and that the claimant does not have disability. These were questions 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 challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer also did not err in determining that the carrier did not waive the right to contest the compensability of the claimed injury to the cervical spine by not timely contesting the injury in accordance with Section 409.021. Whether the compensable injury included the cervical spine was an extent-of-injury question. See Texas Workers' Compensation Commission Appeal No. 002228, decided November 8, 2000. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), effective March 13, 2000, provides that Section 409.021 and the implementing provisions of this statute in Rule 124.3(a) "do not apply to disputes of extent of injury." Accordingly, the

hearing officer properly concluded that the carrier did not waive the right to contest the compensability of the claimed injury to the cervical spine.

The decision and order of the hearing officer are affirmed.

The true corporate name of the carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge