

APPEAL NO. 021770  
FILED AUGUST 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 (CCH) was held on June 13, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury and that the claimant has not had disability. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

The claimant had the burden to prove that she sustained a compensable injury as defined by Section 401.011(10) and that she had disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant contends that the hearing officer erred in denying her request to include an additional disputed issue. The day before the CCH, which was held on June 13, 2002, the claimant filed a "Motion for Continuance and for Permission to Include an Additional Disputed Issue." The claimant requested that the following issue be added to the disputed issues to be resolved at the CCH "Did Carrier fail to meet the seven day deadline to begin paying benefits or to give written notice of its refusal to pay benefits of claimant's claimed injury pursuant to Section 409.021(a), Texas Labor Code." The carrier objected to the addition of that issue. The claimant contended that she had good cause for adding the issue because of the June 6, 2002, opinion of the Texas Supreme Court in Continental Casualty Company v. Downs, No. 00-1309 (Motion for rehearing pending). In that decision, the Texas Supreme Court affirmed the judgment of the court of appeals in Downs v. Continental Casualty Company, 32 S.W.3d 260 (Tex. App.-San Antonio 2000), which held that a carrier waives its right to deny compensability if it fails to comply with Section 409.021(a) by either agreeing to begin the payment of benefits or giving written notice of its refusal to pay within seven days after receiving written notice of an injury. In affirming the court of appeals judgment, the Texas Supreme Court noted that it was "presented not with a question of waiver, but of a deadline (seven days to pay or dispute), and a consequence for failing to meet that deadline (a carrier that does nothing fails to avail itself of the sixty-day period to investigate or deny compensability)."

The issue that was requested to be added was not an issue at the benefit review conference (BRC), was not the subject of any response to the BRC report, and was not an additional issue by unanimous consent. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(b) (Rule 142.7(b)). Requirements for additional disputes by permission of the hearing officer are addressed in Rule 142.7(e), which provides that a party may request the hearing officer to include in the statement of disputes one or more disputes not identified as unresolved in the BRC report, and that the hearing officer will allow such amendment only on a determination of good cause. Since the claimant was represented, the written request to add the issue had to be sent to the Texas Workers' Compensation Commission no later than 15 days before the CCH. Rule 142.7(e)(1)(D). That was not done in this case. The hearing officer determined that the claimant did not have good cause for adding the requested issue to the issues to be resolved at the CCH. In light of the court of appeals decision in Downs, we are not persuaded by the claimant's argument that the "seven day pay or dispute deadline" was unknown prior to the June 6, 2002, opinion of the Texas Supreme Court in that case. We conclude that the hearing officer did not abuse his discretion in determining that the claimant failed to show good cause for adding the requested issue. See Texas Workers' Compensation Commission Appeal No. 021955, decided August 21, 2002.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY  
800 BRAZOS STREET  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge