

APPEAL NO. 021846
FILED SEPTEMBER 9, 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 31, 2002. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the claimant had disability from December 3, 2001, through April 23, 2002; that although the claimant failed to timely file a claim for compensation, the appellant (carrier) is not relieved from liability because the second Notice of Refused/Disputed Claim (TWCC-21), wherein the carrier attempted to raise the defense of the claimant's untimely filing, was not based on newly discovered evidence that could not have been reasonably discovered at an earlier date. In its appeal, the carrier asserts error in each of those determinations. In her response, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____, and that she had disability from December 3, 2001, through April 23, 2002. Those issues presented questions of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. As the fact finder, the hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts the evidence has established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer was acting within her province as the finder of fact in resolving the conflicts and inconsistencies in the evidence in favor of the claimant. Nothing in our review of the record demonstrates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the injury and disability determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We also find no merit in the carrier's assertion that the hearing officer erred in determining that it is not relieved from liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation with the Texas Workers' Compensation Commission within one year of the injury as required by Section 409.003. The carrier did not appeal the determination that it received its first written notice of the claimed injury of _____, on December 24, 2001. In its first TWCC-21, which is dated January 4, 2002, the carrier raised a course and scope defense, election of remedies, and a timely notice defense. The claimant filed her Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) on January 8, 2002, and in a TWCC-21 dated March 1, 2002, the carrier raised the issue of the claimant's failure to timely file a claim. The carrier argues that

the claimant's claim was newly discovered evidence permitting it to reopen the issue of compensability. We considered and rejected that argument in Texas Workers' Compensation Commission Appeal No. 020375, decided March 28, 2002. In that case we noted that where, as here, the carrier receives its first written notice of the injury more than one year after the claimed date of injury, the defense of failure to file a claim is already applicable and could have been raised in the initial dispute period if the carrier had conducted an investigation. In so doing, Appeal No. 020375 stated that the "TWCC-41 did not provide any new evidence that would raise a defense or a reason for relief from liability not already available to the carrier on [the date it received written notice of the claimed injury]." See *also* Texas Workers' Compensation Commission Appeal No. 021609, decided July 31, 2002. Accordingly, we cannot agree that the hearing officer erred in determining that the carrier was not permitted to raise the defense of failure to timely file a claim because it failed to list it on its initial TWCC-21.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge