

APPEAL NO. 021847
FILED AUGUST 20, 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 June 20, 2002. The hearing officer determined that appellant (claimant) did not sustain a compensable injury and that he did not have disability. Claimant appealed these determinations on sufficiency grounds. Claimant also asserts that the hearing officer erred in failing to add an issue regarding carrier waiver. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

We have reviewed the complained-of determinations regarding injury and disability and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are not 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, 176 (Tex. 1986).

Claimant contends the hearing officer erred in failing to add the issue of carrier waiver. The record does not reflect that claimant raised this at the benefit review conference (BRC) or in a response to the BRC report. After a BRC, an issue may be only added for good cause or with the consent of the parties. Section 410.151(b). Carrier did not consent, and the hearing officer did not find good cause. On appeal, claimant contends that he had good cause to add the issue because the Texas Supreme Court issued its decision in Continental Casualty Company v. Downs, No. 00-1309 (June 6, 2002) (motion for rehearing pending). Claimant appears to contend that it could not have requested that a waiver issue be added until after the Texas Supreme Court issued its Downs decision. However, there was nothing that prevented claimant from requesting the addition of a waiver issue before June 6, 2002. We do not find error in the hearing officer's refusal to add the issue of carrier waiver.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** 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.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge