

APPEAL NO. 022201
FILED OCTOBER 10, 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 July 21, 2002. The hearing officer determined that (1) the claimed date of injury (DOI) is _____; (2) the appellant (claimant) did not sustain a compensable injury to her cervical spine and low back; (3) the claimant did not have disability; (4) the respondent (carrier) is relieved from liability for this claim pursuant to Section 409.002, because the claimant did not report an injury to her employer within 30 days of the date of injury, pursuant to Section 409.001; and (5) the carrier did not waive the right to dispute compensability of the claimed injury on _____, or the right to contest the timeliness of the claimant's notice of injury. The claimant appeals the determinations on legal and sufficiency grounds. The carrier urges affirmance.

DECISION

Affirmed.

CARRIER WAIVER ISSUE

We first address the claimant's assertion that the hearing officer erred in determining that the carrier did not waive its right to dispute the claimed injury or contest the timeliness of the claimant's notice of injury. It is undisputed that the carrier timely filed a Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21) disputing compensability of the claimed injury with an original DOI of (original date of injury). A Benefit Review Conference (BRC) was held on May 9, 2002, to address the issue. At the BRC, the claimant amended her date of injury from (original date of injury), to _____ or _____, while continuing to assert the same injurious incident. In view of the amended DOI, the carrier raised the issue of the timeliness of the claimant's notice of injury and continued to dispute the compensability of the claimed injury for the reasons stated in its TWCC-21. It is clear that the claimant and the Texas Workers' Compensation Commission were informed of the carrier's position at the BRC. The carrier's dispute of compensability and the reasons for such dispute were reduced to writing by the benefit review officer (BRO) within seven days of the BRC. The carrier did not file an amended TWCC-21 after receiving notice of the amended date of injury. Given the carrier's failure to file an amended TWCC-21, the claimant contends that the carrier waived the compensability of the claimed injury and did not raise the timely notice defense.

We addressed a similar argument in Texas Workers' Compensation Commission Appeal No. 94292, decided April 26, 1994. The Appeals Panel held, in that case, that a carrier's dispute at a BRC was sufficient to satisfy the requirements for filing a written notice of denial, when the BRC was held within the time period for disputing a claim, the carrier stated its reasons for contesting compensability at the BRC, the contest of

compensability and reasons therefore were reduced to writing by the BRO within the time period for filing a dispute, and the parties proceeded to a CCH based on the carrier's contest of compensability. See also Texas Workers' Compensation Commission Appeal No. 962450, decided January 15, 1997; and Texas Worker's Compensation Commission Appeal No. 980194, decided February 25, 1998. In view of our prior holdings and the particular facts in this case, we conclude that the hearing officer did not err in determining that the carrier did not waive the right to dispute compensability of the claimed injury on _____ or _____, or contest the timeliness of the claimant's notice of injury.

REMAINING ISSUES

The hearing officer did not err in reaching the remaining complained-of determinations. The determinations involved 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 hearing officer's determinations are 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).

The decision and order of the hearing officer are affirmed.

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.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge