

APPEAL NO. 022362
FILED NOVEMBER 12, 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 August 19, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury; that the date of the claimed injury is _____; that the claimant did not give timely notice of the claimed injury to her employer; that she did not have disability; and that the respondent (carrier) did not waive the right to contest compensability of the claimed injury. The claimant appeals the waiver determination and also challenges the hearing officer's determinations regarding compensability, disability, and timely notice. The appeal file contains no response from the carrier.

DECISION

We affirm.

The claimant had the burden to prove that she sustained an injury in the course and scope of her employment; that she gave timely notice of the claimed injury to her employer; and that she had disability as defined by Section 401.011(16). Conflicting evidence was presented on these disputed issues. The hearing officer determined that the claimant did not sustain an injury in the course and scope of her employment; that she did not give timely notice of the claimed injury to her employer; and that she did not have disability. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier 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 findings of fact in this regard are supported by sufficient evidence and are 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).

Regarding the disputed waiver finding, the evidence reflects that the carrier first received written notice of the claimed injury on December 28, 2001, and filed its Notice of Refused/Disputed Claim (TWCC-21) on January 4, 2002. The evidence reflects that the carrier filed its TWCC-21 within seven days of receiving written notice of the injury as required by Section 409.021. As such, the Texas Supreme Court decision in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), which held that a carrier must adhere to a seven-day "pay or dispute" requirement, was complied with in this case.

We affirm the hearing officer's decision and order.

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:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge