

APPEAL NO. 022395  
FILED OCTOBER 16, 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 September 6, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that since there is no compensable injury, there can be no resultant disability; that the carrier is not relieved from liability under Section 409.002, because the claimant timely notified her employer pursuant to Section 409.001; and that the carrier is relieved from liability under Section 409.004, because the claimant did not timely file her Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41). The claimant appealed, arguing that the compensability and disability determinations were against the great weight of the evidence. The claimant additionally argues that the timely filing determination was error because there was no evidence that the employer or the carrier filed an Employer's First Report of Injury or Illness (TWCC-1), therefore tolling the time for the filing of a claim.

DECISION

Affirmed.

Whether the claimant sustained a compensable injury and had disability are factual questions for the hearing officer to resolve. The hearing officer found that "on \_\_\_\_\_, the claimant was not injured, and did not have damage or harm to the physical structure of her body, while furthering the business interest of her employer." The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The finder of fact may believe that the claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they 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). After reviewing the record, we find sufficient evidence to support these determinations.

The claimant contends that the hearing officer failed to properly apply Section 409.008. The claimant asserts that, because a TWCC-1 was not filed in accordance with Section 409.005, the one-year deadline for filing a claim was tolled. Section 409.008 provides:

Section 409.008. FAILURE TO FILE EMPLOYER REPORT OF INJURY; LIMITATIONS TOLLED. If an employer or the employer's insurance carrier has been given notice or has knowledge of an injury to or the death of an employee and the employer or insurance carrier fails, neglects, or refuses to file the report under Section 409.005, the period for filing a claim for compensation under Sections 409.003 and 409.007 does not begin to run against the claim of an injured employee or legal beneficiary until the day on which the report required under Section 409.005 has been furnished.

The tolling provision does not apply unless there is first the duty to file the first report of injury. Texas Workers' Compensation Commission Appeal No. 000444, decided April 13, 2000. Section 409.005(a)(1) states that a TWCC-1 shall be filed with the Texas Workers' Compensation Commission if an injury results in the absence of a worker from work for more than one day. In this case, the claimant testified that she worked from the date of the injury until the date of her termination on February 14, 2001. Therefore, there was no requirement for the filing of a TWCC-1 pursuant to Section 409.005 and the hearing officer did not err in determining that the carrier is relieved from liability under Section 409.008 because the claimant did not timely file her claim. Appeal No. 000444 and Texas Workers' Compensation Commission Appeal No. 020375, decided March 28, 2002.

We affirm the decision and order of the hearing officer.

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

**C T CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge