

APPEAL NO. 022450
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 (CCH) was held on August 23, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant has not had disability; that the respondent (carrier) did not waive its right to dispute compensability of the claimed injury by not contesting the injury in accordance with Section 409.021; and that the carrier is not liable for the payment of accrued benefits under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3) resulting from its failure to dispute or initiate the payment of benefits within seven days of the date it received written notice of the injury. The claimant appealed, and the carrier responded.

DECISION

The hearing officer's decision is affirmed.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer found that the claimant did not injure his back while moving and placing carpeting pieces on the rack on _____. The hearing officer's determination that the claimant did not sustain a compensable injury is supported by sufficient evidence and is 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). The hearing officer did not err in determining that the claimant has not had disability because, without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

With regard to the waiver issue, at the time of the hearing, the Texas Workers' Compensation Commission determined that the 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 of Section 409.021(a), would not be followed until the motion for rehearing process before the Texas Supreme Court had been exhausted. See TWCC Advisory 2002-08 (June 17, 2002). On August 30, 2002, the Texas Supreme Court denied the motion for rehearing, and, as such, the Downs decision, along with the requirement to adhere to the seven-day "pay or dispute" provision, became final. Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002. In the instant case, it is undisputed that the carrier received written notice of the claimant's alleged injury on May 3, 2002, and that it disputed compensability of the alleged injury on (date of alleged injury). (The carrier

denied that the claimant has an injury and denied that the claimant had an injury in the course and scope of his employment). The carrier did not agree to initiate benefits or dispute compensability within seven days of its receipt of written notice of the claimed injury.

However, in Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler, 1998, no pet.), the court held that “if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier’s failure to contest compensability cannot create an injury as a matter of law.” We have previously recognized that Williamson is limited to situations where there is a determination that the claimant did not have an injury, that is, no damage or harm to the physical structure of the body, as opposed to cases where there is an injury which was determined by the hearing officer not to be causally related to the claimant’s employment. Texas Workers’ Compensation Commission Appeal No. 020941, decided June 6, 2002.

In the instant case, the claimant claimed a back injury from lifting carpet at work. The hearing officer noted in the Statement of the Evidence portion of her decision that, based upon the evidence, she believes that the claimant’s injury was fabricated in an attempt to provide an excuse for failing to perform his assigned work. The hearing officer found that “The preponderance of the evidence presented does not show or otherwise establish that the claimant has any injury to his back.” The hearing officer concluded that “Because the Claimant has no injury, under the holding of [Williamson, supra], the carrier owes not [sic] benefits to the Claimant, despite its failure to initiate benefits or dispute compensability within (7) days of the date it received written notice.” The hearing officer also concluded that the carrier is not liable for the payment of accrued benefits pursuant to Rule 124.3. With a finding of no injury, that is, no physical harm or damage to the claimant’s back as claimed, there would be no benefits that would accrue. Although the claimant’s treating doctor, a chiropractor, diagnosed the claimant as having radiculopathy, myelopathy, and a lumbosacral sprain, the hearing officer was not persuaded that the claimant has a back injury as claimed. It has been held that a fact finder is not bound by the testimony or evidence of a medical witness where the credibility of that testimony or evidence is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref’d n.r.e.). It is clear from the hearing officer’s decision that she believed that the claimant fabricated his alleged injury and that she did not believe that the claimant was credible. We conclude that the hearing officer’s determination that the claimant has no back injury is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 N. ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge