

APPEAL NO. 022451
FILED NOVEMBER 13, 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 26, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____, and thus had no resulting disability. The claimant appealed on sufficiency grounds, and also argued that the hearing officer "erred" in not adding the issue of carrier waiver pursuant to Section 409.021, and the Texas Supreme Court's decision in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002). The respondent (self-insured) argued that the hearing officer was correct in not adding the Downs issue as it was not controlling at the time of the benefit review conference (BRC) and the hearing officer's decision was sufficiently supported by the evidence.

DECISION

Affirmed.

Initially, we will consider the claimant's assertion that the hearing officer erred in denying her motion to add the issue of whether the self-insured timely and sufficiently disputed compensability in this case. The claimant filed her motion to add the issue in response to the BRC report. At the hearing, the claimant reurged the motion and the carrier objected to adding the issue asserting that it was never raised at the BRC and that the Texas Workers' Compensation Commission (Commission) is not applying the decision in Downs, *supra*. The claimant did not assert that the issue had been discussed at the BRC, she merely stated that she wanted to create a record for future proceedings. The hearing officer denied the motion because she found that the issue was not discussed at the BRC. The claimant's attorney stated, "That's fine" in response to the hearing officer's ruling. At the hearing, the claimant did not advance any good-cause argument or evidence to add the issue, as is required under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(e) (Rule 142.7(e)) when the parties do not agree to add the issue. As such, we cannot agree that the hearing officer erred in failing to add the issue.

Injury and disability are factual determinations for the hearing officer to make based upon the evidence presented at the CCH. Conflicting evidence was presented on the disputed issues and the hearing officer determined that the claimant failed to meet her burden of proof on both. 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 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, and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica Lopez
Appeals Judge