

APPEAL NO. 022779  
FILED DECEMBER 20, 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 October 11, 2002. The hearing officer determined that the respondent/cross-appellant (self-insured) waived the right to dispute compensability of the claimed injury by not contesting it in accordance with Sections 409.021 and 409.022; that the claimed injury arose out of an act of a third person intending to injure the appellant/cross-respondent (claimant) because of personal reasons and not directed at the claimant as an employee because of the employment; and that the claimant had disability from July 8, 2002, through the date of the hearing. The claimant and self-insured appeal the determinations that are adverse to their respective positions.

DECISION

Affirmed.

The self-insured contends that the hearing officer erred in determining that it failed to contest compensability of the claimed injury within 7 days of receiving written notice. The self-insured claims that it initiated benefits in accordance with Texas Workers' Compensation Commission (Commission) Advisory No. 2001-02, and filed a Payment of Compensation or Notice of Refused/Disputed Claim Form (TWCC-21), denoting the same on July 3, 2002. The evidence, however, reflects that the self-insured stipulated that no benefits had been paid in the claim. Additionally there is not a Commission file-stamped copy of a TWCC-21 bearing a date of July 3, 2002. Based on the TWCC-21 in evidence, which was file-stamped by the Commission as received on July 8, 2002, we cannot agree that the hearing officer erred in determining that the self-insured waived its right to contest compensability of the claimed injury by not doing so in accordance with Sections 409.021 and 409.022.

Whether the claimant's injury arose out of an act of a third person intending to injure him because of personal reasons and whether the claimant had disability were factual questions for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's decision is 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's decision and order is affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CITY SECRETARY  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Chris Cowan  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Veronica Lopez  
Appeals Judge