

APPEAL NO. 022864
FILED JANUARY 2, 2003

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 9, 2002. With respect to the issues before her, the hearing officer determined that the respondent/cross-appellant's (claimant) compensable injury of _____, extends to and includes right carpal tunnel syndrome (CTS) but does not extend to and include reflex sympathetic dystrophy (RSD), right tenosynovitis, and right tennis elbow; that the carrier did not waive the right to contest compensability pursuant to Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002); and that the claimant had disability, as a result of her compensable injury, from July 1, 2002, through the date of the hearing. In its appeal the appellant/cross-respondent (carrier) argues that the hearing officer's determinations that the claimant's compensable injury includes right CTS and that she had disability from July 1, 2002, through the date of the hearing are against the great weight of the evidence. The claimant did not respond to the carrier's appeal. In her cross-appeal, the claimant asserts error in the determination that the compensable injury does not include RSD, right tenosynovitis, and right tennis elbow and that the carrier did not waive its right to contest compensability under Downs. In its response to the claimant's cross-appeal, the carrier urges affirmance of the challenged determinations.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury extends to and includes right CTS, but that it does not include RSD, right tenosynovitis, and right tennis elbow. That issue presented a question of fact for the hearing officer to resolve. 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 and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within her province as the fact finder in determining that the claimant sustained her burden of proving that her compensable injury included right CTS, but did not sustain her burden of proving that her injury included RSD, right tenosynovitis, or right tennis elbow. The hearing officer's determination that the injury included right CTS is supported by the evidence from Dr. D, which the hearing officer was free to accept over contrary evidence from the carrier's required medical examination doctor. The hearing officer was also acting within her province as the fact finder in discounting the portion of Dr. D's report tending to demonstrate that the injury included the other conditions at issue. Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or

manifestly unjust. Accordingly, no sound basis exists for us to reverse the extent-of-injury determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The question of whether the claimant had disability was likewise a question of fact for the hearing officer. The determination that the claimant had disability from July 1, 2002, through the date of the hearing is supported by the claimant's testimony and the off-work slips from Dr. D. Although, Dr. D took the claimant off work at least in part because of the RSD, it is apparent that he also had the claimant off work because of her right CTS, which we have affirmed is part of the compensable injury. The hearing officer's determination that the claimant had disability from July 1, 2002, through the date of the hearing is not so contrary to the overwhelming weight of the evidence as to compel its reversal on appeal. Cain.

Finally, we consider the claimant's argument that the carrier waived its right to contest compensability pursuant to Downs. We find no merit in this assertion. The parties stipulated that the carrier received written notice of the injury on January 28, 2002. The carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) with the Texas Workers' Compensation Commission (Commission) on January 30, 2002, stating that the carrier "will pay income and medical benefits if, as, and when they accrue subject to our further investigation as to compensability." Thereafter, the carrier initiated both medical and income benefits, until it filed an April 5, 2002, TWCC-21, where it denied that the injury extended to or included right tenosynovitis, right CTS, and right tennis elbow. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), the waiver provision of Section 409.021 does not apply to disputes of the extent of injury. Thus, as the hearing officer noted, the carrier was not obligated to dispute the extent of the injury in accordance with Section 409.021. To the extent that the claimant is arguing that Rule 124.3(c) and our interpretation of that rule are in conflict with Section 409.021 and the interpretation of that section given by the Texas Supreme Court in Downs, we note that we are without the authority to consider and resolve challenges to the validity of the Commission's rules. Such questions are matters for the courts to consider. Texas Workers Compensation Commission Appeal No. 001607, decided August 21, 2000. Accordingly, we decline to address this matter on appeal.

The hearing officer's decision and order are affirmed.

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.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge