

APPEAL NO. 023012
FILED JANUARY 17, 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 November 4, 2002. The record closed on November 12, 2002. The hearing officer determined that (1) the compensable injury of _____, includes an injury to the right knee and an aggravation of preexisting degenerative joint disease in the right knee; (2) the respondent (claimant) has had disability beginning _____, through September 3, 2002, with the exception of September 17, 2001; and (3) the appellant (carrier) waived the right to contest compensability of the claimed injury by not contesting the injury in accordance with Section 409.021(c). The carrier appeals these determinations on sufficiency of the evidence grounds and asserts that the right knee injury presented an extent-of-injury issue, to which Section 409.021(c) does not apply. The claimant did not file a response.

DECISION

Affirmed.

The hearing officer did not err in reaching the complained-of determinations. The determinations involved questions 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)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations 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).

With regard to the waiver issue, we agree with the hearing officer, under the particular facts of this case, that the original "claimed injury" included the right knee. Accordingly, the carrier was obligated to dispute the compensability of this condition within the time provided under Section 409.021. Failing to do so, the carrier waived its right to dispute the right knee injury. Additionally, we note that the claimant's right knee injury is compensable in view of our decision above.

The decision and order of the hearing officer 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.**

Edward Vilano
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Robert W. Potts
Appeals Judge