

APPEAL NO. 023019
FILED JANUARY 7, 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 24, 2002. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) date of injury to his right arm was "early _____," that the claimant did not sustain a compensable injury; that the claimant did not have disability resulting from the claimed injury of (alleged injury); and that the respondent (carrier) is relieved from liability for the claimed injury under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001. The claimant appealed on sufficiency of the evidence grounds and asserts that the hearing officer erred in denying the claimant's motion to add a carrier waiver issue at the hearing. The carrier responded, urging affirmance.

DECISION

Affirmed.

On appeal, the claimant asserts that the hearing officer erred in denying his motion to add the issue of whether the carrier waived its right to contest compensability. Section 410.151(b) provides, in part, that an issue not raised at a benefit review conference (BRC) may not be considered unless the parties consent or, if the issue was not raised, the Texas Workers' Compensation Commission determines that good cause exists for not raising the issue at the BRC. At the hearing, the claimant urged reconsideration of the motion and the hearing officer denied the motion because he found that the issue was not discussed at the BRC and that no good cause was shown. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7 (Rule 142.7) provides that additional issues may be added by a party by unanimous consent of the parties, and on the request of a party if the hearing officer finds good cause. We have reviewed the record and we perceive no abuse of discretion on the part of the hearing officer denying the motion to add the carrier waiver issue. Downer v. Aquamarine Operations, Inc., 701 S.W.2d 238 (Tex. 1985), Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer did not err in determining the date of injury, injury, timely notice, and disability issues. The issues in this case all involved factual determinations for the hearing officer to determine, based upon the evidence presented at the hearing. The evidence supports the hearing officer's factual determinations. 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).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LEGION INSURANCE 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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Roy L. Warren
Appeals Judge