

APPEAL NO. 023067  
FILED JANUARY 22, 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 7, 2002. Resolving the disputed issues before her, the hearing officer decided that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_<sup>1</sup>, and that she had disability beginning April 8 and continuing through November 7. The hearing officer also determined that the appellant (carrier) waived the right to contest the compensability of the claimant's injury in failing to timely pay or dispute the claim within seven days of receiving written notice of the claim. The carrier challenges all determinations on sufficiency of the evidence, and specifically contends that the seven-day "pay or dispute" period was never triggered because the claimant did not report a date certain for her date of injury. The claimant responds, urging that the hearing officer be affirmed.

DECISION

Affirmed.

We first address the issue of carrier waiver. The carrier essentially asserts that the hearing officer erred, as a matter of law, by applying Section 409.021 and the holding in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), to this proceeding. We note that Downs, which requires adherence to the seven-day "pay or dispute" provisions of Section 409.021, became final on August 30, 2002. Effective September 12, 2002, the Texas Workers' Compensation Commission updated its previous advisories, to require compliance with Downs. Texas Workers' Compensation Commission Advisory 2002-15, effective September 12, 2002. Here, the carrier argues that because the claimant, in her recorded statement to the carrier given April 15, could not remember the exact date of her injury (only that it was in the week of \_\_\_\_\_), the seven-day "pay or dispute" period was never triggered. This argument is flawed because it is the date of the carrier's written notice of an injury, not the date of injury, that triggers the seven days. In view of our prior decisions and the undisputed evidence that the carrier neither initiated the payment of benefits nor denied the claim within seven days after receiving written notice of the claimant's injury, we cannot conclude that the hearing officer erred in determining that the carrier waived its right to contest compensability of the claimant's injury.

The hearing officer did not err in determining that the claimant sustained a compensable injury on \_\_\_\_\_, when she was working as a journeyman electrician and "pulling wire." The claimant testified that her left shoulder injury included a bone spur and some kind of tear<sup>2</sup>, requiring surgery May 22. The compensability issue presented a question of fact for the hearing officer to resolve. The hearing officer is the

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<sup>1</sup> All dates are in the year 2002, unless otherwise indicated.

<sup>2</sup> The surgical report indicates that the claimant had a partial left rotator cuff tear.

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 persuaded that the claimant sustained her burden of proving that she sustained a compensable injury. The factors emphasized by the carrier in challenging the hearing officer's determinations on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in making her credibility determinations. The claimant's testimony and the medical records support the hearing officer's compensability determination. 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 that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant had surgery on her left shoulder on May 22, to correct the disputed injury, and the hearing officer found that she was unable to obtain or retain employment during her convalescence at her preinjury wage. See Section 401.011(16).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS STREET, SUITE 330  
AUSTIN, TEXAS 78701.**

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Terri Kay Oliver  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge