

APPEAL NO. 023179  
FILED FEBRUARY 6, 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 (CCH) was held on October 28 with the record closing on November 4, 2002. The hearing officer determined that the respondent (claimant herein) sustained a compensable injury; that the date of this injury was \_\_\_\_\_; that the claimant had disability beginning July 4, 2002, continuing through the date of the CCH; and that the appellant (carrier herein) waived its right to contest the compensability of the claimant's injury by not timely disputing the injury. The carrier appeals all of these determinations as being contrary to the evidence. The carrier also argues that the hearing officer's failure to discuss evidence it considers favorable to its case raises the implication that the hearing officer failed to consider this evidence. The claimant responds that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The issues of injury, date of injury and disability are issues of fact. There was conflicting evidence presented regarding these issues. 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no basis to reverse the hearing officer's resolution of the injury, date of injury, or disability issues.

The carrier argues that the fact that the hearing officer fails to mention certain evidence favorable to carrier "would lead a reasonable person to believe that no consideration was given" to this evidence. We note that the hearing officer states as follows in her decision: "Although all of the evidence admitted was not discussed, it was considered." We find no reason to believe that the hearing officer did not consider all of the evidence in reaching her decision.

The hearing officer found that the carrier waived its right to dispute the compensability of the claimant's injury because it failed to do so within seven days of receiving written notice of the claimant's injury. The carrier argues that it was not

required to dispute because it contends there were no benefits due within seven days of its receipt of written notice. Even if benefits were not due, the carrier is still required, pursuant to Section 409.021 and the decision of the Texas Supreme Court in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), either to agree to pay benefits or to dispute compensability. See Texas Workers' Compensation Commission Appeal No. 022091-s, decided October 7, 2002; Texas Workers' Compensation Commission Appeal No. 022375-s, decided October 31, 2002. It is undisputed the carrier failed to do either of these things. The hearing officer correctly found that the carrier waived its right to dispute compensability.

The decision and order of the hearing officer are affirmed.

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

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

---

Gary L. Kilgore  
Appeals Judge

CONCUR:

---

Terri Kay Oliver  
Appeals Judge

---

Robert W. Potts  
Appeals Judge