

APPEAL NO. 023262  
FILED FEBRUARY 19, 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 December 12, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that the respondent (carrier) did not waive its right to contest compensability of the alleged injury; and that the claimant did not have disability. The claimant appeals those determinations. There is no response from the carrier contained in our file.

DECISION

Affirmed in part and reversed and rendered in part.

The hearing officer erred as a matter of law in his statement that, "There is no legal requirement that the insurance carrier must inform a **claimant** by *any* amount of time that it contests compensability of the claimed injury." (Emphasis in original). Section 409.021(a) provides that "not later than the seventh day after the date on which an insurance carrier receives written notice of an injury, the insurance carrier shall . . . (2) notify the [Texas Workers' Compensation Commission (Commission)] **and the employee** in writing of its refusal to pay. . . ." (Emphasis added). Consequently, the hearing officer makes a misstatement of the law because the carrier must give written notice to both the Commission and the claimant of the carrier's refusal to pay no later than the seventh day after the carrier receives written notice of an injury.

Regarding notice to the Commission, the hearing officer states in his Finding of Fact No. 8:

The carrier first received proper written notice on May 1, 2002, that the Claimant had sustained an injury related to his employment. On May 3, 2002, the carrier filed its [Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21)] form with the Commission, contesting compensability of the alleged injury.

Hearing Officer's Exhibit No. 4 is a computer screen printout depicting receipt by the Commission of the carrier's TWCC-21 on May 3, 2002, so the hearing officer's determination that the Commission timely received the carrier's refusal to pay is supported by the record. Further, the TWCC-21 admitted into evidence demonstrates that the carrier acknowledged that it received written notice of the claimant's injury on May 1, 2002.

Regarding notice to the claimant the hearing officer states, in his Finding of Fact No. 9:

On May 3, 2002, the carrier put its TWCC-21 notice of contest of compensability in the mail to the claimant. The TWCC-21 form arrived at his proper location for receipt of mail not later than May 7, 2002.

However, we see no evidence in the record to support the hearing officer's finding of fact that the TWCC-21 was mailed to the claimant at his proper location for receipt of mail. The TWCC-21 that was admitted into evidence has an incorrect address listed for the claimant. The claimant gave a statement to the carrier's representative indicating that his (address 1), however, the TWCC-21 that was admitted into the record to reflect that a TWCC-21 was sent to the claimant, incorrectly listed the claimant's address at (address 2). Because there is nothing that we find in the record to support the hearing officer's finding of fact that the TWCC-21 was mailed to the claimant at his proper address, we reverse his decision and issue a new finding that the carrier waived the right to contest compensability of the injury, and conclude that the injury is compensable as a matter of law.

The hearing officer also determined that the claimant did not have disability. Whether the claimant had disability concerned factual questions for the hearing officer to resolve. 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). 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. 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 have reviewed the matters complained of on appeal and conclude that the hearing officer's decision regarding disability is supported by sufficient evidence.

Accordingly, we affirm the hearing officer's determinations regarding disability and reverse and render a new decision and order that the carrier waived the right to dispute compensability of the injury.

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

**ROBIN M. MOUNTAIN  
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300  
IRVING, TEXAS 75063.**

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Roy L. Warren  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge