

APPEAL NO. 030390
FILED MARCH 25, 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 January 8, 2003. The record was held open until January 15, 2003, for submission of written closing arguments. The hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease (bilateral carpal tunnel syndrome); that he did have disability resulting from the compensable injury beginning on May 31, 2002, and continuing through the date of the hearing; and that the appellant (carrier) waived the right to contest compensability of the claimed injury by not timely disputing the injury in accordance with Section 409.021. The carrier appealed and the claimant responded, urging affirmance.

DECISION

Affirmed.

We have reviewed the complained-of determinations and find that the hearing officer's Decision and Order is supported by sufficient evidence to be affirmed. The disputed issues of injury and disability presented questions of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issues. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier's appeal challenges the hearing officer's determination that it waived the right to contest the claimed injury by not contesting the injury in accordance with Section 409.021. The evidence reflects that the carrier received its first written notice of injury on June 5, 2002, and filed its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) on June 18, 2002. With regard to the waiver issue, the carrier asserts that the hearing officer erred by retroactively applying 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 (Commission) updated its previous advisories to require compliance with Downs. Commission Advisory 2002-15, effective September 12, 2002. The advisory provided, "All previous

Advisories issued by the Commission regarding this issue are **superseded** by this Advisory and the Supreme Court decision.” (Emphasis added.) The Appeals Panel has since applied Downs when the issue of carrier waiver is raised on appeal. See, e.g., Texas Workers' Compensation Commission Appeal No. 022274, decided October 17, 2002 (rejecting the carrier's argument that Downs should not be applied retroactively); Texas Workers' Compensation Commission Appeal No. 022230, decided October 21, 2002; Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002; and Texas Workers' Compensation Commission Appeal No. 023162, decided February 6, 2003. In view of our prior decisions and the evidence that the carrier neither initiated the payment of benefits as they became due nor disputed 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 carrier's argument regarding waiver and the date it received notice that the claimant was claiming disability is moot, as we have already affirmed the hearing officer's determination regarding disability on the merits.

The hearing officer's decision and order are affirmed.

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

**JOSEPH LALLO
4550 DACOMA STREET
HOUSTON, TEXAS 77092-8614.**

Daniel R. Barry
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge