

APPEAL NO. 030420
FILED APRIL 10, 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 January 24, 2003. With respect to the disputed issues before him, the hearing officer determined that the appellant (claimant) did not sustain an injury on _____, and thus had no resultant disability. In addition, the hearing officer determined that had the claimant sustained a compensable injury, the respondent (carrier) would have been relieved of liability under Section 409.002 because the claimant failed to timely notify her employer pursuant to Section 409.001. Further, the hearing officer resolved that the carrier did not waive its right to contest compensability under Section 409.021. The claimant appeals, challenging the sufficiency of the evidence on the compensability, disability, and timely notice determinations, and argues that the carrier waived its right to contest the compensability of the claim because it failed to challenge "compensability" in its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21). The carrier responds, arguing that the record supports the hearing officer's determinations, that he should be affirmed, and that the carrier did contest compensability in its TWCC-21. The carrier also argues that even if it had not contested the compensability of the claim in its TWCC-21, the compensability issue was certified from the benefit review conference (BRC), the claimant did not respond to the BRC report and stipulated to the compensability issue at the CCH; therefore, the carrier argues that the claimant waived any argument she may have had regarding the carrier's alleged waiver of the right to contest compensability.

DECISION

Affirmed.

We have review the complained-of determinations. We note that the TWCC-21 filed by the carrier reads, in pertinent part, "Carrier controverts all medical, compensability, lost time benefits. . . ." The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer was acting within his province as the fact finder in resolving the evidence in favor of the carrier and nothing in our review of the record demonstrates that the hearing officer's determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order is affirmed.

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

**ROBIN MOUNTAIN
ACE USA
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge