

APPEAL NO. 030469
FILED APRIL 9, 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 23, 2003. With respect to the disputed issues before him, the hearing officer determined that the respondent (claimant) did not sustain an injury in the course and scope of her employment on _____. However, because the hearing officer determined that the appellant (carrier) waived its right to contest the compensability of the claimant's injury under Section 409.021(a), he determined that the claimant's injury was compensable, and that her inability to obtain and retain employment from _____, to the date of the CCH was due to her lumbar pathology (the alleged injury). The appellant (carrier) appeals on sufficiency of the evidence grounds, argues that it did timely file its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) and timely notify the claimant under Section 409.021(a), and, in the alternative, that had it not timely notified the claimant with its TWCC-21, it was not required to do so pursuant to the decision in Continental Casualty Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.) (where there is no injury, the failure to timely dispute compensability does not create a compensable injury). The claimant responded, urging that the hearing officer be affirmed, and that the carrier could not raise Williamson for the first time on appeal, and that, nevertheless, Williamson did not apply to this case as the claimant sustained an underlying injury.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____, and had disability from _____, through January 23, 2003, as a result of said compensable injury. The claimant testified that she injured her lumbar spine when she fell off of a ladder at work. The medical records introduced support the claimant's allegations, with the history of the mechanism of the injury as given by the claimant. The carrier presented conflicting evidence on both the compensability and the disability issues. Specifically, the carrier presented the testimony of several of the claimant's coworkers to the effect that the claimant had not fallen off the ladder and lied about falling to make the employer "pay" for some vague wrong done to the claimant. The hearing officer found that the claimant did not injure her lumbar spine in the course and scope of her employment, but that she was unable to retain and obtain employment at her preinjury wage as a result of the injury to her lumbar spine, which he believed was degenerative.

The hearing officer's determination of compensability rested upon his conclusion that the carrier waived its right to dispute the compensability of the claimant's injury under Section 409.021(a), i.e., that because the carrier had written notice of the claimant's alleged injury on _____, but did not mail a copy of its TWCC-21 to

the claimant until August 26, 2002 (as was dated the cover letter and more than 7 days after it received written notice), it waived the right to dispute the claim. The carrier argued that it did timely copy the claimant with its TWCC-21, as well as the Texas Workers' Compensation Commission, on August 20, 2002. However, the hearing officer did not believe the evidence supported that the claimant had been timely notified of the carrier's dispute.

The carrier relies on the decision in Williamson, *supra*, to argue that had it not timely copied the claimant with its TWCC-21 (disputing the claim), it would not have waived its right to dispute the claim under Section 409.021(a) because the claimant sustained no injury. Williamson applies only where there is no underlying injury. Texas Workers' Compensation Commission Appeal No. 992907, decided February 10, 2000. In this case, there was evidence of an injury to the claimant's low back. Thus, Williamson provides no relief to the carrier.

Under the 1989 Act, 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 claimant 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 **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge