

APPEAL NO. 030664  
FILED APRIL 30, 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 February 20, 2003. The hearing officer decided that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and did not injure his midback, low back, abdomen, and neck; that the respondent (carrier) did not waive the right to contest compensability of the claimed injury by not timely contesting the injury; and that the claimant did not have disability resulting from the claimed injury. The claimant appeals and the carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant claimed injuries to his midback, low back, abdomen, and neck from bumping into a valve at work as he was backing up on \_\_\_\_\_. The hearing officer notes that the claimant did not miss any time from work because of the injury, in fact, the claimant worked overtime hours after the injury. Nor did the claimant seek any medical attention until eight months later, on November 14, 2002. On that date the claimant had an unrelated dispute with his employer when his employment ended. It is undisputed that the claimant was angry with his employer on that day. With respect to whether the claimant sustained an injury, the Accident Investigation Report, which was completed on the day of the incident, \_\_\_\_\_, states, "No apparent redness or bruising" and indicates the claimant was "complaining of slight pain in his back." The hearing officer found that the claimant was not injured.

With respect to whether the claimant sustained an injury and the extent of the alleged injury, the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer resolved what facts were established. After review of the record and the complained-of determinations, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's Finding of Fact No. 7 states, "[t]he Carrier received written notice of the Claimant's claimed work injury of \_\_\_\_\_, on November 14, 2002 and timely filed a [Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21)] disputing the claimed injury on November 22, 2002." Section 409.021 provides that an insurance carrier shall, not later than the seventh day after the date on which the insurance carrier receives written notice of an injury, begin the payment of benefits or notify the Texas Workers' Compensation Commission and the injured employee in writing of its refusal to pay. The Supreme Court of Texas in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) held that the

failure of a carrier to comply with this provision resulted in the carrier waiving its right to contest compensability.

In Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.), the court held that “if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier’s failure to contest compensability cannot create an injury as a matter of law.” The Appeals Panel has previously recognized that Williamson is limited to situations where there is a determination that the claimant did not have an injury, that is, no damage or harm to the physical structure of the body, as opposed to cases where there is an injury which was determined by the hearing officer not to be causally related to the claimant’s employment. Texas Workers’ Compensation Commission Appeal No. 020941, decided June 6, 2002. Thus, we conclude that Williamson applies to the facts of this case because the claimant has no physical harm or damage remotely associated with the \_\_\_\_\_, event. We note that this case is factually very similar to the circumstances in Williamson.

Although the carrier did not pay benefits or file the TWCC-21 within 7 days of its receipt of written notice, there is no waiver where there is no physical harm or damage to the body. Texas Workers’ Compensation Commission Appeal No. 023017, decided January 27, 2003. Therefore error, if any, by the hearing officer’s determination that the carrier timely disputed the compensability of the claim, is harmless.

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition disability depends upon a compensable injury. See Section 401.011(16).

We affirm the hearing officer's decision and order.

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

**TIM McGUIRE**  
**9330 LBJ FREEWAY, SUITE 1300**  
**DALLAS, TEXAS 75243.**

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Roy L. Warren  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge