

APPEAL NO. 030950  
FILED JUNE 12, 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 March 24, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that the claimant has not had disability; and that the respondent (carrier) did not waive its right to contest compensability of the injury because it contested compensability within seven days of its receipt of written notice of the injury. The claimant appealed the hearing officer's determinations on all of the disputed issues, and the carrier responded.

DECISION

Affirmed.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented with regard to whether the claimant was injured in the course and scope of his employment. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer found that the claimant did not sustain any new low back injury on \_\_\_\_\_, as was claimed by the claimant. Although the hearing officer found that from July through October 2002, the claimant exacerbated his symptoms from his prior injury, he did not find that any such exacerbation occurred while working for the employer. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the claimant did not sustain a compensable injury is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

With regard to the waiver issue, the claimant contended that the carrier received written notice of the claimed injury at 4:04 p.m. on Monday, November 4, 2002, and in support of that assertion referred to page 2 of Claimant's Exhibit No. 1, a written document reflecting the date and time a call was taken with regard to the claimed injury (the document states the "origin" was the internet) and containing specific information regarding the claim. The carrier contended that it received written notice of the claimed injury at 7:07 p.m. on November 4, 2002, and in support of that assertion referred to Carrier's Exhibit No. 3, the claim adjustor's answers to interrogatories.

The hearing officer found that the carrier received written notice of the injury "after work hours" on November 4, 2002, and that "at the start of business on November 5, 2002, the carrier received proper written notice of the claimed injury." It is undisputed

that on November 12, 2002, the Texas Workers' Compensation Commission (Commission) received the carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), in which the carrier contested compensability of the claimed injury. Using November 5, 2002, as the date the carrier first received written notice of injury, the hearing officer concluded that the carrier contested compensability within seven days of written notice of the injury and, therefore, did not waive its right to contest compensability. See Section 409.021(a) and Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), regarding the seven day pay or dispute time period.

In Texas Workers' Compensation Commission Appeal No. 030105, decided February 21, 2003, the Appeals Panel applied Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.3(c) and (d) (Rules 102.3(c) and (d)) and determined that, because the written notice to the carrier was received after normal business hours, as defined by Rule 102.3(c), the carrier did not receive the written notice until the next working day per Rule 102.3(d). In the instant case, there was conflicting evidence as to when the carrier first received written notice of the claimed injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). However, we cannot say that page 2 of Claimant's Exhibit No. 1 would not constitute written notice of the injury to the carrier. If the carrier did in fact receive written notice of the injury during normal business hours, as defined by Rule 102.3(c), on November 4, 2002, as claimed by the claimant, then the seventh day thereafter would have been Monday, November 11, 2002, which was Veterans Day, a national holiday listed in Section 662.003(a) of the Texas Government Code. Thus, pursuant to Rules 102.3(a)(3) and (b), the seven-day time period for the carrier to contest compensability was extended to November 12, 2002, which was the next day that was a working day as defined by Rule 102.3(b). See Texas Workers' Compensation Commission Appeal No. 960044, decided February 15, 1996, and Texas Workers' Compensation Commission Appeal No. 962596, decided March 27, 1997, which applied Rule 102.3(a)(3) to extend the 60-day period in Section 409.021(c) to the next working day. Since the carrier's TWCC-21 contesting compensability was filed with the Commission on November 12, 2002, we conclude that the hearing officer did not err in determining that the carrier did not waive its right to contest compensability.

We affirm the hearing officer's decision and order.

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

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

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Robert W. Potts  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Margaret L. Turner  
Appeals Judge