

APPEAL NO. 030955
FILED MAY 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 March 26, 2003. The hearing officer decided that the appellant (claimant) did not sustain a compensable injury on _____; that because there was no compensable injury the claimant had no disability; and that the respondent (carrier) has not waived the right to contest compensability of the claimed injury because it did timely contest the alleged injury. The claimant appeals those determinations and the carrier responds, urging affirmance.

DECISION

Affirmed.

Initially we will discuss whether the carrier waived the right to contest compensability of the claim. 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 (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. The claimant appeals the hearing officer's conclusion that the carrier did not waive its right to contest compensability of the claim by disputing it within seven days of first receiving written notice of the claimant's injury. As support for his contention that the carrier waived the right to dispute the claim, the claimant states that he "provided three TWCC-41 forms along with fax transmittal sheets...that were sent out and received on August 21, and 29, 2002." The carrier points out in its response to the claimant's appeal that, "there is no evidence in the record to show that these facsimile numbers were the correct numbers for the employer or the carrier." The hearing officer determined that, "the Carrier's first written notice of an injury was received on September 6, 2002," and that on September 12, 2002, the carrier timely filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) disputing the claimed injury. We note from the TWCC-21 that the carrier admits written notice of the claim on September 6, 2002. There is no dispute that the Commission received the TWCC-21 on September 12, 2002. Upon 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).

With respect to the alleged injury, the claimant contended that he sustained an injury to his left foot on _____, resulting in an amputation of his small toe. 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, *supra*.

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 **DALLAS FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSS POLK
14160 DALLAS PARKWAY, SUITE 700
DALLAS, TEXAS 75254.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge