

APPEAL NO. 031055-s
FILED JUNE 19, 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 April 1, 2003. The hearing officer determined that respondent (claimant) sustained an injury in the course and scope of his employment on _____; that claimant had disability beginning on August 13, 2002, and continuing through the date of the hearing; that claimant had good cause for failing to report the injury within 30 days; and that appellant (carrier) waived the right to contest the compensability of the claimed injury. Carrier appealed these determinations on sufficiency grounds. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm in part, and reverse and render in part.

Carrier contends that the hearing officer erred in determining that claimant sustained an injury at work on _____. The hearing officer heard claimant's testimony and reviewed the medical evidence in this case. We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Carrier contends that the hearing officer erred in determining that it waived the right to contest the compensability of the claim. We first note that in Finding of Fact No. 9, the hearing officer stated that carrier made a "Downs filing" on September 6, 2002. Carrier appealed this finding of fact and there is no evidence to support this finding. In other portions of the Decision and Order, the hearing officer states that carrier did not take any action on the claim until September 11, 2002. This is undisputed. We reverse Finding of Fact No. 9, as against the great weight and preponderance of the evidence and render a decision that carrier took no action to either initiate benefits, or to dispute the compensability of the _____, injury until September 11, 2002. Our reversal of this fact finding does not change the bottom line determination regarding carrier waiver, which will be discussed below.

Carrier contends that it did not receive written notice of injury until September 6, 2002. However, carrier had received a telephone call regarding the claimed injury and on August 30, 2002, a written "first report of injury" form was created on another state's notice form. At the top of the form, it indicates that it was faxed on August 30, 2002. In her affidavit, a claims representative for carrier stated that "the claim was sent to [State] on August 30, 2002." There was evidence that carrier's office in State then sent the report of injury to carrier's Texas office in September 2002. From this evidence, the

hearing officer could determine that carrier received written notice of injury on August 30, 2002.

Carrier contends that it did not receive “written notice of a Texas worker’s compensation claim” until September 6, 2002. Carrier asserts that it had 7 days from September 6, 2002, to take action pursuant to Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002). However, as stated above, carrier had written notice of injury on August 30, 2002. The written notice listed the employer’s address in Texas and also gave a Texas address for claimant. Therefore, carrier was on notice that there might be extraterritorial jurisdiction in Texas and that claimant might file a claim in Texas. Even more significantly, claimant *had* already filed a claim in Texas by August 30, 2002. With one telephone call, carrier could have ascertained that claimant had already filed a claim in Texas. Carrier did not take any action within 7 days of August 30, 2002, and it did not file a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) until September 11, 2002. Under these facts, we conclude that the hearing officer did not err in determining that carrier waived the right to contest the compensability of the claim. Texas Workers' Compensation Commission Appeal No. 94752, decided July 25, 1994, cited by carrier, is distinguishable because in the case now before us, claimant had not filed a claim in any other jurisdiction.

Carrier contends that the hearing officer erred in determining that it is not relieved of liability under section 409.001 because of claimant’s failure to timely notify his employer of the claimed injury. Claimant testified that he reported a work-related injury to his supervisor. The hearing officer determined that claimant did not report to his supervisor that his problems were work related. The hearing officer also determined that, “[t]he claimant had good cause for failing to report the injury to his employer within 30 days of _____, through August 2002, in that he reasonably believed that [Mr. B], his supervisor, had understood that he was reporting a work related injury when he talked to [Mr. B] on _____.” While we do not hold that a mistaken belief that one has given notice can never constitute good cause for failure to timely report an injury, we reverse the hearing officer’s determination that claimant had good cause for failing to timely report the claimed injury and render a decision that claimant did not have good cause for failing to report an injury, under the evidence presented here.

However, given the fact that carrier waived the right to contest the compensability of the claim, carrier is not relieved of liability in this case despite the fact that claimant did not timely report his injury to his employer or have good cause for such failure. See Texas Workers' Compensation Commission Appeal No.022027-s, decided September 30, 2002.

Carrier complains that the hearing officer did not make a finding that supports the disability determination. The hearing officer determined that, “as a result of the injury to his back and neck, the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage beginning on August 13, 2002, and continuing through the date of the hearing in this matter.” This finding supports the hearing officer’s disability determination. Carrier also contends that claimant did not have disability

because the injury is not compensable. The injury is compensable as a matter of law due to carrier waiver.

We affirm that part of the hearing officer's decision and order that determined: (1) claimant sustained an injury at work on _____; (2) claimant had disability from August 13, 2002, through the date of the hearing; and (3) carrier waived the right to contest the compensability of the claim. We reverse that part of the hearing officer's decision that determined that claimant had good cause for failing to timely report the injury and render a decision that claimant did not have good cause for failing to report the injury. We affirm the hearing officer's decision that claimant's injury is compensable.

According to information provided by carrier, the true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge