

APPEAL NO. 031214
FILED JUNE 18, 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 21, 2003. The hearing officer determined that: (1) the appellant/cross-respondent (carrier) waived its right to contest compensability of the claimed injury by not disputing the injury in accordance with Section 409.021; (2) due to the carrier's waiver, the respondent/cross-appellant (claimant) sustained a compensable injury on _____; (3) the claimant had disability from September 23, 2002, through the date of the hearing; and (4) the carrier is not relieved from liability for this injury under Section 409.002, because the claimant gave timely notice pursuant to Section 409.001. The carrier appeals these determinations on sufficiency of the evidence grounds and asserts legal error citing Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.). The claimant urges affirmance of these determinations but cross-appeals the hearing officer's adverse finding on course and scope. The carrier responds urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in reaching the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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).

Notwithstanding the above, the carrier contends that the claimant did not sustain a compensable injury and have resulting disability, citing Williamson. The carrier essentially argues that under Williamson it cannot waive into an injury that did not arise within the course and scope of employment. We disagree. In Williamson, 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 said that Williamson is limited to situations where there is a determination that the claimant had no injury, 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. The hearing officer, in this case, found that the claimant has a back

injury. Because the carrier waived its right to contest the claimed injury under Section 409.021, it is compensable.

The hearing officer's decision and order are affirmed.

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

**MR. DAVE WOODS
14160 DALLAS PARKWAY, SUITE 500
DALLAS, TEXAS 75254.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge