

APPEAL NO. 031271
FILED JUNE 26, 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 7, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (carrier) is not relieved from liability under Section 409.002 because of the respondent's (claimant) failure to timely notify his employer pursuant to Section 409.001, and that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under his wife's insurance. The carrier appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence. The claimant responded, urging affirmance.

DECISION

Affirmed.

The issue of whether the claimant timely reported his injury to his employer was a question of fact for the hearing officer. Conflicting evidence was presented on the disputed issue. 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. In view of the evidence presented, the hearing officer's determination 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 (Tex. 1986).

The carrier additionally appealed the election-of-remedies determination. The applicable law regarding election of remedies is set forth in Texas Workers' Compensation Commission Appeal No. 030473, decided April 15, 2003. Whether an election has been made is generally a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 972051, decided November 13, 1997. Critical to a finding of an election of remedies is the determination that the election of nonworkers' compensation remedies was an informed choice. Texas Workers' Compensation Commission Appeal No. 981226, decided July 20, 1998; Texas Workers' Compensation Commission Appeal No. 990525, decided April 16, 1999. The mere acceptance of group health benefits is normally not sufficient in itself to establish an election of remedies. Texas Workers' Compensation Commission Appeal No. 001471, decided August 7, 2000. In this case, the hearing officer found that the claimant "did not successfully exercise an informed choice between his wife's insurance and Texas workers' compensation benefits." The hearing officer determined that the claimant is not barred from pursuing workers' compensation benefits due to an election to receive benefits under his wife's group health insurance policy. The evidence sufficiently supports the hearing officer's election-of-remedies determination.

In addition, the carrier contends that the hearing officer's determinations are against the great weight and preponderance of the evidence because "there was not a discussion as to her rationale in the Statement of Evidence" paragraph. In addition to the brief summary, the Statement of the Evidence paragraph states that "[t]he hearing officer considered all evidence presented in making the Findings of Fact and Conclusions of Law upon which this decision is based." The Appeals Panel stated that the 1989 Act does not require that the Decision and Order of the hearing officer include a statement of the evidence and that omitting some of the evidence from a statement of the evidence did not result in error. Texas Workers' Compensation Commission Appeal No. 000138, decided March 8, 2000, citing Texas Workers' Compensation Commission Appeal No. 94121, decided March 11, 1994. While the hearing officer could have written a more detailed statement of the evidence, she did not err in not summarizing all of the evidence.

We affirm the hearing officer's decision and order.

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

**RICHARD A. MAYER
11910 GREENVILLE AVENUE, SUITE 600
DALLAS, TEXAS 75243.**

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge