

APPEAL NO. 031294
FILED JULY 11, 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 24, 2003. The hearing officer determined that because the appellant (carrier) waived the right to contest compensability of the claimed injury, the respondent (claimant) sustained a compensable injury on _____; that the claimant did not have disability at any time after _____; and that the carrier had not timely contested compensability of the claimed injury in accordance with Section 409.021.

The carrier appealed, contending that it had timely contested compensability of the claimed injury and that there "is not a scintilla of credible evidence supporting the Hearing Officer's finding that Carrier received written notice of the Claimant's alleged injuries on February 4, 2003." The file does not contain a response from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant was involved in a work-related motor vehicle accident (MVA) on _____. In dispute was the severity of the MVA and exactly when and how the claimant told her supervisor of the claimed injuries. The claimant testified that when she was in the doctor's office on February 4, 2003, an employee of the doctor "faxed" notice of the injury to the carrier's adjuster. That testimony is supported by a statement from that employee and facsimile header indicating that a "Report of Injury to Carrier and Employer" was sent at 5:35 pm on February 4, 2003. It is undisputed that the carrier's first dispute was on a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) filed on February 20, 2003. Consequently, the carrier waived its right to contest compensability under Sections 409.021 and 409.022 because it failed to timely pay benefits or dispute compensability within seven days of its written notice of the injury. The carrier contends that the facsimile transmission sheets (in its exhibits) "are largely blank" and have an incorrect fax number. Whether or not a fax was sent, when it was sent, and what it contained were questions of fact for the hearing officer to resolve. He did so and his determinations are supported by the evidence.

In the alternative the carrier argues that the claimant did not sustain an injury, applying Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.). However, even the employer's clinic, where the claimant was first seen, has an assessment of "cervical/lumbar/abd strain."

The hearing officer's decision is supported by the evidence 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).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **UNITED STATES FIDELITY AND GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge