

APPEAL NO. 031340
FILED JULY 17, 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 28, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that he had disability from August 31 through September 9, 2002, and from September 14, 2002, through the date of the hearing; and that the appellant (carrier) waived the right to contest compensability of the claimed injury by failing to timely contest it in accordance with Section 409.021. The carrier appeals these determinations. The appeal file contains no response from the claimant.

DECISION

Affirmed.

Whether the claimant sustained a compensable injury and had disability were factual questions for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record reveals that the hearing officer's compensability and disability 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 (Tex. 1986).

The carrier argues on appeal that the holding in Continental Casualty Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.) precludes a finding that the carrier waived the right to contest compensability of the claimed injury because, in the present case, the claimant did not establish that he sustained damage or harm to the physical structure of his body on _____. Despite the fact that the carrier is not aggrieved by the waiver finding as the hearing officer found, that irrespective of the waiver issue, the claimant sustained a compensable injury on _____, we would point out that in Texas Workers Compensation Commission Appeal No. 030275, decided March 17, 2003, we noted that the Appeals Panel does not interpret Williamson, *supra*, to require proof of damage or harm on the specific date alleged.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Veronica Lopez-Ruberto
Appeals Judge

Edward Vilano
Appeals Judge