APPEAL NO. 031540
FILED JULY 28, 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 May 15, 2003. With respect to the issues before her, the hearing officer determined that the appellant (claimant) sustained a compensable right knee injury; that the date of injury is _____; that the compensable injury does not include osteomyelitis, epidural abscess, epidural hematoma, and a staphylococcus infection; that the respondent (carrier) is not relieved from liability pursuant to Section 409.002 because the claimant timely reported his injury to his employer; that the claimant did not have disability because of his compensable right knee injury; and that the carrier did not waive its right to contest compensability under Sections 409.021 and 409.022. In his appeal, the claimant asserts error in the hearing officer's extent-of-injury, carrier waiver, and disability determinations. In its response to the claimant's appeal, the carrier urges affirmance. The carrier did not appeal the hearing officer's determinations that the claimant sustained a compensable injury, that the date of injury is _____, and that the claimant timely reported his injury to his employer and those determinations have become final. Section 410.169.

DECISION

Affirmed, as modified.

Initially, we consider the claimant's argument that the hearing officer erred in determining that the carrier did not waive its right to contest compensability in this instance under Section 409.021 and 409.022. The hearing officer found that the carrier received its first written notice of the injury on November 19, 2002. On the "cert 21" dated November 19, 2002, the carrier acknowledges written notice on that date. However, on its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated November 25, 2002, the carrier acknowledges receiving its first written notice of the injury on November 18, 2002. The claimant essentially argues that the hearing officer should have determined that the date of first written notice was November 18, 2002. However, we note that even if the hearing officer had found this earlier date of written notice, her determination that the carrier did not waive its right to contest compensability would still be affirmable. The TWCC-21 where the carrier contests compensability is date stamped as having been received by the Texas Workers' Compensation Commission (Commission) on December 19, 2002. That date of filing is seemingly confirmed in sequence number one of the Dispute Resolution Information System-Contact Data (DRIS). However, as the hearing officer noted, the TWCC-21 also reflects that it was sent by facsimile from the carrier to the (city) field office at the correct fax number on November 25, 2002. It is apparent that the hearing officer determined from that information that the carrier filed the TWCC-21 with the field office on November 25, 2002, and that document was mishandled, such that it was not date stamped as having been received until December 19, 2002. As the fact finder, the

hearing officer was charged with resolving the conflicts in the evidence and determining what facts had been established. We cannot agree that her determination that the TWCC-21 was filed on November 25, 2002, in accordance with the facsimile information on that document, is so against the great weight of the evidence as to compel its reversal on appeal. As such, the hearing officer did not err in determining that the carrier did not waive its right to contest compensability because its dispute was filed within seven days of the earliest date the carrier may have received written notice on November 18, 2002.

The hearing officer did not err in determining that the claimant's compensable injury does not include osteomyelitis, epidural abscess, epidural hematoma, and a staphylococcus infection. The claimant had the burden of proof on the extent issue and it presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, the hearing officer determined that the credible evidence did not establish a causal connection between the claimed conditions and the claimant's right knee laceration injury. The hearing officer simply was not persuaded that the claimant sustained his burden of proof on the extent-of-injury issue. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the extent-of-injury determination on appeal. Pool, *supra*; Cain, *supra*. In addition, no basis exists for us to disturb the hearing officer's decision even though another fact finder may have drawn different inferences from the evidence, which would have supported a different result. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

There is little dispute that the claimed disability was related to the conditions at issue in the extent-of-injury issue and not due to the claimant's compensable right knee laceration. Thus, given our affirmance of the determination that the compensable injury does not include osteomyelitis, epidural abscess, epidural hematoma, and a staphylococcus infection, we likewise affirm the determination that the claimant did not have disability as a result of his compensable injury.

Finally, we note that in Conclusion of Law No. 4 and in her Decision, the hearing officer improperly references a left knee injury. The evidence establishes that the claimant injured his right knee on _____. Accordingly, we modify Conclusion

of Law No. 4 and the Decision section by changing the reference to the left knee to the right knee.

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

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** 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.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Edward Vilano
Appeals Judge