

APPEAL NO. 031777  
FILED AUGUST 20, 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 June 4, 2003. The hearing officer determined that the respondent's (claimant) lumbar radiculopathy and failed back symptomatology are results of the compensable injury.

The appellant (carrier) appeals, contending that the claimant had sustained a new and independent injury on \_\_\_\_\_, and that the new injury is the sole cause of the complained-of lumbar radiculopathy and failed back symptomatology. The claimant responds, urging affirmance and asserting that the carrier's appeal is untimely.

DECISION

Affirmed.

Regarding the timeliness of the carrier's appeal, the carrier's representative signed for the decision and order on June 11, 2003 (receipt by the carrier is June 11, 2003, not June 13, 2003, as the carrier states). Pursuant to Section 410.202, as amended, the request for review must have been filed no later than July 3, 2003. The carrier's appeal is postmarked July 2, 2003, and was received by the Texas Workers' Compensation Commission on July 8, 2003. The carrier's appeal was timely pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)).

On the merits, the parties stipulated that the claimant sustained a compensable (lumbar spine) injury on \_\_\_\_\_. It is undisputed that the claimant had a fall on \_\_\_\_\_, and subsequently had complaints of left leg and left low back pain. The parties also stipulated that the claimant's compensable injury was to the lumbar spine in the same area as that of his current complaints. The claimant testified that after April 19, 1999, he had been treating with his treating doctor every month or every other month for his compensable injuries. The carrier contends that the \_\_\_\_\_, fall constituted an entirely new and independent injury. The hearing officer placed, and the carrier accepted, the burden of proof that the \_\_\_\_\_, fall was the sole cause of the claimant's "current condition."

The carrier primarily relied on the emergency room record of August 23, 2002, and its peer review doctor's reports. The claimant relied on the treating doctor's reports that the \_\_\_\_\_, fall caused only "a minor soft tissue trauma . . . without any sequela" and that the claimant continued to have the same problems as before the fall.

The medical evidence was in conflict and it is the hearing officer, as the sole judge of the weight and credibility of the evidence, who resolves the factual conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so

against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We do not so find.

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

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

**RICHARD A. MAYER  
REGIONAL VICE PRESIDENT  
11910 GREENVILLE AVENUE, SUITE 600  
DALLAS, TEXAS 75374-3488.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Veronica Lopez-Ruberto  
Appeals Judge