

APPEAL NO. 032061
FILED SEPTEMBER 16, 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 July 10, 2003. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the compensable injury extends to include a disc herniation at L5-S1 with an annular tear; that the appellant (carrier) waived its right to contest compensability of the claimed low back injury; and that the claimant had disability, as a result of his compensable injury, from October 17, 2002, through the date of the hearing. In its appeal, the appellant (carrier) asserts error in each of those determinations. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The carrier did not advance a specific argument in regard to the waiver issue on appeal. The carrier in this case complied with the seven-day requirement of Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002); however, at the hearing, the carrier's attorney acknowledged that the carrier did not contest the claimed injury within 60 days of the date it received written notice of the injury. He maintained that there nevertheless was no waiver in accordance with Continental Cas. Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.). In Williamson, the court held that "if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law." The Appeals Panel has held that Williamson is limited to situations where there is a determination that the claimant did not have an injury, that is, no damage or harm to the physical structure of the body, as opposed to cases where there is an injury, which was determined by the hearing officer not to be causally related to the claimant's employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002. In the instant case, the hearing officer found that the claimant has a back injury, and since that finding is supported by the evidence Williamson is inapplicable. Accordingly, the hearing officer correctly determined that the carrier had waived its right to contest compensability in this case and that the claimant's low back injury of _____, became compensable as a matter of law because it is undisputed that the carrier failed to file its contest within the 60-day period provided in Section 409.021 for doing so.

The hearing officer did not err in determining that the claimant's compensable injury included a disc herniation at L5-S1 with an annular tear and that the claimant had disability, as a result of his compensable injury, from October 17, 2002, through the date of the hearing. Those issues presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the

evidence. Section 410.165(a). As the trier of fact, 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). The hearing officer was persuaded that the claimant sustained his burden of proving that his compensable injury included the disc herniation at L5-S1 with an annular tear and that the claimant had disability for the period found. Nothing in our review of the record reveals that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the extent-of-injury or disability determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**JOSEPH KELLEY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge