

APPEAL NO. 032170  
FILED OCTOBER 7, 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 21, 2003. With respect to the issues before her, the hearing officer determined that the appellant (claimant) sustained a compensable injury on \_\_\_\_\_; that he did not timely report his injury to his employer; that the respondent (carrier) waived its right to contest compensability of the injury, thus, the carrier is not relieved of liability because of the claimant's failure to timely report his injury to his employer; and that the claimant had disability as a result of the compensable injury, only from June 10 to June 27, 2002. In his appeal, the claimant asserts error in the hearing officer's notice and disability determinations. In its response to the claimant's appeal, the carrier urges affirmance. The carrier did not appeal the determinations that the claimant sustained a compensable injury and that it waived the right to contest compensability in this case and those determinations have, therefore, become final. Section 410.169.

DECISION

Affirmed.

The claimant contends on appeal, as he did at the hearing, that he reported his \_\_\_\_\_, injury to his employer immediately after it happened. The witnesses for the carrier presented contrary evidence that, although the claimant was missing time from work after \_\_\_\_\_, they thought it was because of a (prior injury date), compensable injury. The hearing officer was free to credit the testimony from those witnesses over the contrary evidence from the claimant. The record sufficiently supports the hearing officer's determination that the claimant did not timely report the \_\_\_\_\_, injury to his employer and nothing in our review of the record reveals that the hearing officer's determination in that regard is so contrary to the great weight of the evidence as to compel its reversal on appeal. However, we note that the claimant is not aggrieved by this determination. The hearing officer's determination that the carrier waived the right to contest compensability has become final and she correctly determined that the carrier lost its right to assert the notice defense here by failing to timely contest compensability. Texas Workers' Compensation Commission Appeal No. 022027-s, decided September 30, 2002.

The hearing officer did not err in determining that the claimant had disability as a result of his compensable injury only from June 10 to June 27, 2002. That issue presented a question 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 he was unable to work during the period of disability found as a result of his compensable

injury. However, she was not persuaded that the claimant sustained his burden of reestablishing disability in the period from May 29 to July 18, 2003, when he again missed time from work for low back problems. The evidence established that the claimant worked from July 2002 to May 28, 2003, and that he began missing time from work on May 29, 2003, when he developed back pain after helping his wife in the garden. Nothing in our review of the record reveals that the hearing officer's determination that the claimant's disability from the compensable injury ended on June 27, 2002, is 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 that determination 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 **COLONIAL AMERICAN CASUALTY & SURETY COMPANY** and the name and address of its registered agent for service of process is

**TRACEY L. HALEY  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Margaret L. Turner  
Appeals Judge