

APPEAL NO. 032309  
FILED OCTOBER 23, 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 August 6, 2003. The hearing officer determined that appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; and that respondent (carrier) did not waive the right to contest the compensability of the claimed injury in accordance with Sections 409.021 and 409.022. He also determined that the injury proved was a cervical, thoracic, and trapezius muscle strain, though he found these were not compensable. Claimant appealed, contending that the evidence supports a determination that she sustained a compensable injury on (subsequent date of injury); that she never received the carrier's letter regarding payment benefits; and that such a letter was not sent to the Texas Workers' Compensation Commission (Commission) within the required seven day period. Claimant asserts that carrier waived the right to contest the compensability of the claimed injury. Carrier responded, urging affirmance.

DECISION

We affirm.

In her appeal, claimant says she sustained a compensable injury on (subsequent date of injury). At the hearing, claimant said her date of injury was \_\_\_\_\_. The (subsequent date of injury), date appears to be a typographical error.

The hearing officer did not err in determining that claimant did not sustain a compensable repetitive trauma injury on \_\_\_\_\_. We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is supported by the record and is not 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, 176 (Tex. 1986).

Likewise, whether claimant received the letter from carrier on March 26, 2002, stating that benefits would be paid as they accrue was a question of fact for the hearing officer to resolve. The hearing officer noted that carrier received written notice of the claimant's injury on March 25, 2002, and sent the claimant a letter dated March 26, 2002, stating that benefits would be paid as they accrue. Claimant testified that at the time the carrier sent her the letter she was living at the address where the letter was sent. The hearing officer determined that claimant would have received the letter no later than April 1, 2002. We conclude that the complained-of determinations regarding carrier waiver are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Claimant asserts that carrier's failure to notify the Commission within seven days of its agreement to pay benefits to claimant results in carrier waiver. The hearing officer found that carrier took some action within seven days of being notified of the claimant's injury and notified claimant that it would pay benefits as they accrue. Therefore, there was no waiver. See Texas Workers' Compensation Commission Appeal No. 031208, decided June 18, 2003. We perceive no error.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ACE USA** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN  
VICE PRESIDENT OF ACE USA  
600 CAMPUS CIRCLE DRIVE EAST, SUITE 200  
IRVING, TEXAS 75063.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Margaret L. Turner  
Appeals Judge