

APPEAL NO. 032443  
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 20, 2003. With respect to the issues before him, the hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable injury on \_\_\_\_\_; that he did not have disability; and that the appellant/cross-respondent (carrier) waived its right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021. In its appeal, the carrier argues that the hearing officer erred in determining that the claimant sustained a compensable injury and that it waived its right to contest compensability. In his response to the carrier's appeal, the claimant urges affirmance of those determinations. The claimant filed a cross-appeal, arguing that the hearing officer's determination that he did not have disability is against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance of the disability determination.

DECISION

Affirmed.

The compensability and disability issues in this case involved factual questions 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) He 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). Nothing in our review of the record indicates that the hearing officer's injury and disability 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 disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier acknowledged that it did not comply with the seven-day requirement of Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002). It maintains that it is inappropriate to retroactively apply the Downs decision. In Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002, the Appeals Panel applied the decision in Downs and noted that "On August 30, 2002, the Texas Supreme Court denied the carrier's motion for rehearing, and the Downs decision, along with the requirement to adhere to a seven-day 'pay or dispute' provision, is now final." In subsequent decisions, the Appeals Panel has rejected the contention that the decision in Downs should not be applied retroactively, noting that Commission Advisory 2002-15 (September 12, 2002) provides that "All previous Advisories issued by the Commission regarding this issue are superceded by this Advisory and the Supreme Court decision." Texas Workers' Compensation Commission Appeal No. 022274, decided October 17, 2002, Texas Workers' Compensation Commission Appeal No.

022582, decided November 25, 2002; see Texas Workers' Compensation Commission Appeal No. 030739, decided May 13 2003. Thus, we find no merit in the carrier's argument that the hearing officer erred in applying Downs in this case.

The carrier also asserts that the decision in Continental Cas. Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.), controls here. 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 not to be causally related to the claimant's employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002; Texas Workers' Compensation Commission Appeal No. 030739, decided May 13 2003. In the instant case, the hearing officer found that the claimant had an injury within the meaning of the 1989 Act and that finding is supported by the evidence. Thus, the Williamson decision is inapplicable.

Finally, the carrier argues that application of the Downs decision here constitutes an impermissible, unconstitutional sanction and deprives it of its constitutional rights. As an administrative agency, we are without the authority to resolve the particular questions raised by the carrier inasmuch as the Downs decision is the Supreme Court's interpretation of the statute. Texas Workers' Compensation Commission Appeal No. 92124, decided May 11, 1992.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Margaret Turner  
Appeals Judge