

APPEAL NO. 032537  
FILED NOVEMBER 18, 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 (CCH) was held on August 11, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and therefore, by definition, has not sustained disability, and that the respondent (carrier) did not waive its right to dispute the alleged compensability of the claimant's injury. The claimant appealed, arguing that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. The carrier responded, urging affirmance.

DECISION

Affirmed.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10). Conflicting evidence was presented on this issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Our review of the record reveals that the hearing officer's compensable injury determination is supported by sufficient evidence and is not 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 the challenged determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). We find no merit in the claimant's contention on appeal that the hearing officer may have based her decision on evidence not contained in the record. The hearing officer noted that the claimant's testimony appears to have been concocted in response to evidence which was damaging to his position in this case.

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability.

Section 409.021(a) requires that a carrier act to initiate benefits or to dispute compensability within seven days of first receiving written notice of an injury or waive its right to dispute compensability. Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. The claimant acknowledges in his appeal that the carrier submitted a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) within seven days after receiving its first written notice of injury certifying

that benefits would be paid as and when they accrue. The claimant argues that the submission was not in good faith and failed to meet the requirements of the 1989 Act as expressed in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) because the carrier failed to pay the disability benefits promised in the TWCC-21. In Texas Workers' Compensation Commission Appeal No. 022375-s, decided October 31, 2002, we rejected the argument that by failing to pay the benefits when they accrued, the carrier had waived its right to contest compensability. Rather, we held that the carrier was liable for all medical and income benefits that accrued prior to the date the notice of denial was filed. In the instant case, the claimant testified at the CCH that he had been paid some medical benefits. The hearing officer's determination on the carrier waiver issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **FIRST LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge