

APPEAL NO. 032668  
FILED DECEMBER 1, 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 September 17, 2003. The hearing officer resolved the disputed issues by determining that the respondent/cross-appellant's (claimant) \_\_\_\_\_, injury arose from her voluntary participation in an off-duty activity and, therefore, was not work-related; that the appellant/cross-respondent (self-insured) waived the right to contest the compensability of the claimed injury by not timely contesting it in accordance with Section 409.021; that due to the self-insured's waiver of the right to contest compensability, the claimant's injury became compensable as a matter of law; and that the claimant had disability from March 14 through April 13, 2003, with the exception of the week of "spring break." The self-insured appeals the waiver determination and its resulting effect on compensability and disability. The claimant appeals the determination that her injury was not work related. Both parties responded to the opposition's request for review.

DECISION

Affirmed.

Section 409.021(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1(a) (Rule 124.1(a)) require receipt of written notice of an injury to trigger the 7-day pay or dispute period. Rule 124.1(a)(3) indicates that any communication, regardless of source, may serve as written notice of injury if it fairly informs the carrier of the name of the injured employee, the identity of the employer, the approximate date of the injury, and information which asserts that the injury is work-related. In determining that the self-insured first received notice of the injury on March 14, 2003, the hearing officer noted that the school principal generated an e-mail on that date that clearly identified the claimant, the nature and date of the injury, and that by detailing the circumstances of the injury, made an "assertion of work-relatedness." It is the work-related aspect which the self-insured complains was not included in the notice. The self-insured contends that because the e-mail does not specifically identify the injury as "work-related" and because the creator of the e-mail did not believe that the injury was work-related, the requirements of Rule 124.1(a)(3) were not satisfied. We disagree. The hearing officer explained that given the content of the e-mail, the fact that the self-insured did not recognize "the circumstances as an assertion of work-relatedness does not diminish the effectiveness of this notice." The hearing officer concluded that the self-insured waived the right to dispute compensability of the claimed injury by not doing so until March 24, 2003, and, consequently, the claimant's left ankle and wrist injuries became compensable as a matter of law. In view of the evidence presented, we cannot conclude that the hearing officer's waiver, compensability, or disability determinations are 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).

The hearing officer determined that the claimant was not injured in the course and scope of her employment because at the time of the injury, she was voluntarily participating in an activity that she was not expressly or impliedly required to attend and her attendance was not a reasonable expectancy of her employment. Conflicting evidence was presented at the hearing on this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)); the fact finder resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). We perceive no reversible error in the hearing officer's determination that the claimant's injury occurred while participating in an activity that was not a part of her work-related duties. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the carrier is  
**(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RM  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Chris Cowan  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge