

APPEAL NO. 032764
FILED DECEMBER 10, 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 24, 2003. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, that she did not have disability, and that the respondent (carrier) did not waive its right to contest compensability pursuant to Section 409.021. In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. The appeal file does not contain a response to the claimant's appeal from the carrier.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. That issue presented a question of fact for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It was a matter for the hearing officer to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence has established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In this instance, the hearing officer was not persuaded that the claimant sustained her burden of proving that she was injured at work lifting a golf bag as she claimed. Nothing in our review of the record reveals that the challenged determination 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 evidence also supports the hearing officer's determination that the carrier did not waive its right to contest compensability in this instance. The evidence supports the hearing officer's determination that the carrier received its first written notice of the claimed injury on May 14, 2003. The carrier's "cert 21" saying that it would pay benefits as they accrued was acknowledged by the Texas Workers' Compensation Commission (Commission) on May 20, 2003, within seven days of the date it received written notice. The record reflects that the carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) with the Commission contesting compensability on May 23, 2003. Accordingly, the hearing officer did not err in determining that the carrier did not waive its right to contest compensability in this case.

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have

disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 410.011(16).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge