

APPEAL NO. 033097
FILED JANUARY 12, 2004

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 November 4, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury; that the claimant did not give timely notice of the injury to his employer; and that the respondent (carrier) timely contested compensability of the claimed injury. The claimant appeals these determinations and asserts that the hearing officer erred in admitting Carrier's Exhibit No. 10, which was not timely exchanged. The carrier urges affirmance of the hearing officer's decision.

DECISION

Affirmed as reformed.

The hearing officer recites in the Statement of the Evidence that the claimant's employment was terminated due to a reduction in force on April 17, 2003. However, the evidence reflects that the claimant was actually terminated on June 17, 2003. The Statement of the Evidence is reformed to correct this error.

Whether the claimant sustained a compensable injury and gave timely notice of the injury to his employer were 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)) and it is for the hearing officer to resolve such conflicts and inconsistencies in the evidence as were present in this case (Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer did not err in admitting Carrier's Exhibit No. 10, a copy of the Payment of Compensation or Notice of Refused/Disputed Claim Form (TWCC-21), along with the confirmation showing that the form was received via facsimile by the Commission on June 27, 2003. *Compare* Texas Workers' Compensation Commission Appeal No. 032619-s, decided November 13, 2003. Relying on this form, the hearing officer determined that the carrier agreed to initiate benefits as they accrued within seven days after receiving written notice of the injury and, consequently, did not waive the right to later contest compensability of the claimed injury on or before the 60th day after the date the carrier received written notice of the injury. We perceive no error in the hearing officer's resolution of the waiver issue.

The decision and order of the hearing officer are affirmed as reformed.

The true corporate name of the insurance carrier is **SENTRY INSURANCE, A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

**TREVA DURHAM
1000 HERITAGE CENTER CIRCLE
ROUND ROCK, TEXAS 78664.**

Chris Cowan
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge