APPEAL NO. 033204
FILED FEBRUARY 4, 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 12, 2003. The hearing officer decided that the appellant (self-insured herein) waived its right to dispute the compensability of the claimed injury by not timely disputing the claim in accordance with Section 409.021(a); that the respondent (claimant herein) sustained a compensable injury on _____; and that the claimant had disability from July 10 through September 11, 2003. The self-insured appeals, contending that the hearing officer erred in finding that the self-insured waived its right to dispute the compensability of the claimant's injury and that the hearing officer made conflicting findings regarding injury. There is no response from the claimant to the self-insured's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

First, we do not find the hearing officer's decision to contain conflicting findings. The hearing officer found that the claimant did not injure his back on _____, while furthering the affairs of the employer. However, the hearing officer did find that the claimant had an injury to his low back and that this injury was compensable due to the fact that the self-insured waived its right to dispute compensability. There is no conflict between the hearing officer finding that the claimant did not have an injury in the course and scope of his employment, but that the claimant's low back condition had become compensable through waiver. If waiver cannot make an otherwise noncompensable injury compensable, then the concept of waiver would be meaningless.

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. *See* Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) (hereinafter Downs); Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. The hearing officer found that the self-insured waived its right to dispute compensability due to the fact that the self-insured received written notice of injury on July 14, 2003, but did not file any dispute until July 30, 2003. The self-insured argued that the time to initiate benefits or to dispute did not begin until its claims servicing contractor first received notice of a claim. The Appeals Panel has previously rejected the argument that the time for waiver begins to run from the time an adjusting company, as opposed to the self-insured, first receives written notice. We stated as follows in Texas Workers' Compensation Commission Appeal No. 951741, decided December 6, 1995:

We disagree that the foregoing provisions apply in this case, as that portion of the 1989 Act concerns private employers who must apply to the Texas Workers' Compensation Commission in order to become certified self-insurers. By the same token, the [1989] Act in Section 401.011(27) defines "insurance carrier" to include an insurance company, a certified self-insurer for workers' compensation insurance, or "a governmental entity that self-insures, either individually or collectively." The Appeals Panel has held that these entities are insurance carriers for purposes of Section 409.021(c), and are subject to the strictures therein. In Texas Workers' Compensation Commission Appeal No. 941387, decided December 2, 1994, we upheld the hearing officer's determination that the self-insured school district waived its right to contest the compensability of the claimant's injury because it failed to do so within 60 days of receiving notice of the claim. In so holding, that panel wrote,

> In this case, the school is the employer and is a self-insured political subdivision of this state. Pursuant to Section 401.011(27) the school is an "insurance carrier." Consequently, the school's 60-day period for contesting compensability of the claimant's injury would have begun when the school received "written notice of injury" as that term is defined in [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1 (Rule 124.1)].

See also Texas Workers' Compensation Commission Appeal No. 950522, decided May 11, 1995.

We note that we reaffirmed our decision in Appeal No. 951741, *supra*, in our decision in Texas Workers' Compensation Commission Appeal No. 002120, decided October 11, 2000. The self-insured argues that somehow our previous decisions that the time limit to dispute without waiving begins to run on a self-insured from the time of written notice to its adjusting company, not written notice to the self-insured, have been overruled by statutory changes in Section 409.021 that provide for injuries that occur on or after September 1, 2003, a certified self-insured receives notice of injury on the date that its qualified claims servicing contractor receives notice. While this certainly changes the rule for injuries taking place on or after September 1, 2003, by its terms it does not change how claims for injuries that occurred prior to September 1, 2003, are treated. In fact, had this been intended by the legislative change, the Legislature could have explicitly stated this. The fact that instead the Legislature clearly stated that this provision only applied to injuries that occurred on or after September 1, 2003, indicates that the Legislature did not intend it to apply to those injuries taking place previous to that date.

While the self-insured also argues that the hearing officer erred in finding that the self-insured actually received written notice of injury on July 14, 2003, and in finding that the claimant had any injury whatsoever to his low back, these were essentially factual

determinations made by the hearing officer. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we do not find that the hearing officer erred as matter of law in making the challenged findings.

The hearing officer's decision and order are affirmed.

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

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Margaret L. Turner
Appeals Judge

_____
Edward Vilano
Appeals Judge