

APPEAL NO. 033262
FILED JANUARY 22, 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 20, 2003. The hearing officer decided that: (1) the respondent (claimant herein) sustained a compensable injury; (2) the date of injury is _____; (3) the appellant (carrier herein) is not relieved from liability under Section 409.002 because the claimant timely reported his injury; and (4) the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy. The carrier appeals the injury, date of injury, notice, and election-of-remedies determinations on sufficiency of the evidence grounds. The claimant urges affirmance.

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.

INJURY AND DATE OF INJURY

The hearing officer did not err in determining that the claimant sustained a compensable injury and that the date of the claimant's injury was _____. These were questions of fact 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, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). While there was conflicting evidence on both the issue of injury and of the date of the injury, it was the province of the hearing officer to resolve these conflicts. In view of the evidence presented, we cannot conclude that the hearing officer's 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 (Tex. 1986).

NOTICE

The hearing officer did not err in determining that the carrier is not relieved from liability under Section 409.002 because he found that the claimant did timely report his injury. There is conflicting evidence as to when the claimant actually reported an injury with the claimant contending that the evidence showed he reported his injury on _____, and the carrier contending that the injury was not reported until February 4, 2003. Here again, the issue turns on weighing the evidence and making a factual determination and once again the decision of the hearing officer is sufficiently supported by the evidence.

ELECTION OF REMEDIES

The hearing officer did not err in determining that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy. The hearing officer's determination that the claimant did not make an informed election between two rights or remedies so inconsistent as to constitute a manifest injustice to receive health insurance benefits in lieu of workers' compensation benefits is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain, supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **CASUALTY RECIPROCAL EXCHANGE** and the name and address of its registered agent for service of process is

**FRED S. STRADLEY
9330 LYNDON B. JOHNSON FREEWAY
SUITE 1400, ABRAMS CENTER
DALLAS, TEXAS 75243-4355.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge