APPEAL NO. 040125
FILED MARCH 1, 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 December 17, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease because the appellant (carrier) had waived the right to contest compensability of the injury by failing to timely contest the injury pursuant to Section 409.021.

Although the carrier recites that it was appealing the determination that it did not timely file a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), the gist of the carrier's appeal asserts a Continental Casualty Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.) (Williamson) defense that waiver cannot create an injury. The claimant responds, urging affirmance.

DECISION

Affirmed as reformed.

In this case the carrier received first written notice of the claimed injury on _____, and did not contest compensability until filing a TWCC-21 on November 25, 2002. The carrier's contest of compensability was not timely pursuant to Section 409.021.

The carrier cited, and quoted at of some length from Williamson, *supra*, and asserted that "the Hearing officer correctly determined that the [claimant] did not sustain an injury" and that that finding has not been challenged, "therefore, it stands as a matter of law." We disagree. The hearing officer, in Finding of Fact No. 6 determined:

> 6. Claimant has an injury in the form of chronic and severe bilateral carpal tunnel syndrome, chronic and moderate to severe bilateral cubital tunnel syndrome, and chronic and moderate to severe bilateral radial tunnel syndrome, as evidenced by electrodiagnostic testing and a report from [Dr. M].

Unfortunately the hearing officer also found in Finding of Fact No. 11 that the claimant "did not sustain a compensable injury, in the form of an occupational disease" while concluding exactly the opposite in Conclusion of Law No. 4. However our review of the record, and the hearing officer's Statement of the Evidence, leads us to conclude that what the hearing officer meant in Finding of Fact No. 11 was that the claimant did not sustain a work-related injury or an injury in the course and scope of employment. Consequently, we reform the hearing officer's Finding of Fact No. 11 to state "Claimant did not sustain a work-related injury . . . ."

While the carrier mentioned Williamson in its closing argument, it is a stretch to say it was "argued at length." We reject the carrier's appeal; clearly the hearing officer found an injury and that determination was supported by medical evidence.

We have reviewed the carrier's appeal and conclude that the hearing officer's determinations were not incorrect as a matter of law and are not so against the great weight and preponderance of the evidence as to be clearly or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order, as reformed.

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

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Margaret L. Turner
Appeals Judge