

APPEAL NO. 040223
FILED MARCH 3, 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 January 7, 2004. The hearing officer determined that the respondent's (claimant) _____, compensable injury extends to and includes injuries to the cervical, thoracic, and lumbar spine, and that the appellant (carrier) waived the right to contest compensability of the claimed injury by not timely contesting it in accordance with Sections 409.021 and 409.022. The carrier appeals these determinations. The claimant urges affirmance of the hearing officer's decision and order.

DECISION

Affirmed.

The carrier requests on appeal that the hearing officer's decision be reversed and a new decision rendered "that the [c]arrier has not waived its right to contest the issue of whether or not the compensable injury includes injury to the [c]laimant's cervical, thoracic and lumbar spine." However, there is no evidence to suggest that the hearing officer found that the carrier waived the right to dispute the extent of the claimed injury. The evidence reflects that the carrier first received written notice of the claimed injury on March 20, 2003, and did not agree to initiate benefits or dispute the injury within seven days thereafter. The hearing officer's decision makes clear that by not contesting the claimed injury within seven days after first receiving written notice of the injury, it waived the right to do so. The hearing officer explained during closing arguments that extent of injury cannot be waived and that he found the inclusion of the waiver issue to be unnecessary given the fact that there was a stipulation that the claimant sustained a compensable injury on _____. It is apparent that the hearing officer's extent-of-injury determination was made irrespective of the waiver determination and that he did not perceive this case to be one where a dilatory carrier attempted to recast the primary claimed injury issue as an extent issue and thereby avoid the mandates of Section 409.021. Accordingly, we cannot agree that the hearing officer erred in determining that the carrier waived the right to contest compensability of the claimed injury or that there is any indication that the hearing officer found that the carrier waived the right to contest the extent of the injury.

Extent of injury was a factual question 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)). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates

that the hearing officer's decision is 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, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

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

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret Turner
Appeals Judge