

APPEAL NO. 040361  
FILED APRIL 12, 2004

This appeal on remand 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 June 24, 2003, and September 23, 2003, with the record closing on October 2, 2003. The hearing officer determined that the respondent (claimant) did not sustain an injury while in the course and scope of his employment on \_\_\_\_\_; 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; that as a result of the waiver of the right to contest compensability, the claimant's injury became compensable as a matter of law; and that the claimant had disability from September 19, 2002, through the date of the hearing. In Texas Workers' Compensation Commission Appeal No. 032885, decided December 22, 2003, we remanded the case for the hearing officer to resolve the dispute regarding the claimant's identity. On remand, the hearing officer concluded that the claimant was FM and issued the same decision on the disputed issues as she had previously. The carrier appeals the waiver determination and its resulting effect on compensability and disability. The appeal file contains no response from the claimant.

DECISION

Affirmed.

The carrier asserts that the hearing officer failed to resolve the dispute regarding the claimant's identity and because written notice is legally insufficient to trigger the waiver provisions unless it includes the claimant's correct name (Texas Workers' Compensation Commission Appeal No. 961993, decided November 21, 1996), the hearing officer was precluded from finding that the carrier waived its right to dispute compensability of the claimed injury. However, the hearing officer resolved the conflicting evidence involving the claimant's identity by concluding in the Decision on Remand that the claimant was in fact FM. The evidence reflects, and the carrier does not dispute, that it first received written notice of the injury on September 23, 2002, and filed its dispute on October 21, 2002. Therefore, we cannot agree that the hearing officer erred in determining that the carrier waived its right to dispute compensability of the claimed injury and, consequently, it became compensable as a matter of law.

Whether the claimant had disability resulting from the compensable 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)). Nothing in our review of the record indicates that the hearing officer's disability determination 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 **ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

**LEO MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Edward Vilano  
Appeals Judge