

APPEAL NO. 040487  
FILED APRIL 19, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on January 22, 2004. With regard to (Docket No. 1) the hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable occupational disease injury with a date of injury of (date of injury for Docket No. 1); that the claimant did not have disability; that she did not timely report the claimed injury to the employer pursuant to Section 409.001; and that respondent 1 (carrier 1) did not waive the right to dispute compensability of the claimed injury by not timely contesting it in accordance with Sections 409.021 and 409.022. With regard to (Docket No. 2), the hearing officer resolved the disputed issues by determining that the claimant did not sustain a compensable occupational disease injury with a date of injury of (date of injury for Docket No. 2); that the claimant did not have disability; that she did not timely report the claimed injury to the employer pursuant to Section 409.001; and that respondent 2 (carrier 2) did not waive the right to dispute compensability of the claimed injury by not timely contesting it in accordance with Sections 409.021 and 409.022. The claimant appeals the hearing officer's determinations in both dockets. Carrier 1 and carrier 2 urge affirmance of the hearing officer's decision.

DECISION

Affirmed as reformed.

Whether the claimant sustained a compensable occupational disease injury, had disability and gave timely notice of the claimed injury to her employer were factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). 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). The hearing officer was not persuaded that the claimant met her burden of proof on the aforementioned issues and found against her in both dockets. Nothing in our review of the record indicates that the hearing officer's decision in this regard 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 (Tex. 1986).

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); Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. The hearing officer found that both carrier 1 and carrier 2 had complied with the requirements of Downs, and, consequently, had not waived the right to contest compensability of the claimed injury. While the evidence

supports the hearing officer's conclusions of law in this regard, we would point out that the findings of fact relating to carrier 1 reflect incorrect dates. The evidence reflects that carrier 1 first received written notice of the claimed injury on August 7, 2003, and filed its dispute of the injury on August 8, 2003. Accordingly, Finding of Fact Nos. 12 and 14 are reformed to reflect the correct dates and Finding of Fact No. 13 is hereby deleted from the decision. Additionally, with regard to Docket No. 2, the paragraphs entitled "Conclusions of Law" and "Decision" reflect a claimed date of injury of October 31, 2001. As the remainder of the hearing officer's decision recites a claimed date of injury of (date of injury for Docket No. 2), and that date is supported by the evidence, the aforementioned paragraphs of the hearing officer's decision are reformed to reflect that the claimed date of injury in Docket No. 2 is (date of injury for Docket No. 2).

The claimant asserts on appeal that the hearing officer committed gross negligence, disregarded crucial evidence, distorted the evidence and was prejudiced against the claimant. Upon review of the record in this case, there is no evidence to support these assertions.

The decision and order of the hearing officer are affirmed as reformed.

The true corporate name of insurance carrier 1 is **LUMBERMENS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

and the true corporate name of insurance carrier 2 is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN  
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200  
IRVING, TEXAS 75063.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge