

APPEAL NO. 040584
FILED APRIL 28, 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 February 24, 2004. The hearing officer determined that: (1) the appellant/cross-respondent (carrier) waived its right to dispute the claimed injury by not timely contesting the injury in accordance with Section 409.021; (2) due to the carrier's waiver, the respondent/cross-appellant (claimant) sustained a compensable occupational disease injury with a date of injury of _____; (3) although the claimant failed to timely notify her employer of an injury in accordance with Section 409.001, the carrier is not relieved from liability under Section 409.002 due to the carrier's waiver; and (4) the claimant had disability from August 13, 2003, through December 31, 2003, but not from January 1, 2004, through the date of the hearing. The carrier appeals, asserting that it did not waive its right to contest compensability of the claimed injury because no benefits were due prior to the filing of its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21). The claimant did not file a response. The claimant cross-appeals, on sufficiency of the evidence grounds, the hearing officer's findings that the claimant's work was not repetitive or traumatic and that the claimant did not have disability from January 1, 2004, through the date of the hearing. The carrier responded, urging affirmance.

DECISION

Affirmed.

CARRIER'S APPEAL

The hearing officer did not err determining that the carrier waived its right to dispute the claimed injury by not timely contesting the injury in accordance with Section 409.021. Section 409.021 provides, in pertinent part, that an insurance carrier shall, not later than the seventh day after the receipt of written notice of an injury, begin the payment of benefits as required by the 1989 Act or notify the Texas Workers' Compensation Commission and the employee in writing of its refusal to pay benefits. In Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003, citing Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002), we interpreted Section 409.021 to require that a carrier take some action within seven days of receiving written notice of an injury, and we admonished that a carrier which does nothing and later asserts that it "intended to pay in accordance with the 1989 Act [when benefits accrued]," does so at its own risk. The undisputed evidence shows that the carrier received first written notice of the injury on September 19, 2001, and filed a TWCC-21 disputing the injury on September 15, 2003. Accordingly, the hearing officer properly concluded that the carrier waived its right to dispute compensability of the injury.

CLAIMANT'S CROSS-APPEAL

The hearing officer did not err in making the complained-of determinations. The determinations involved 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)). In view of the evidence presented, we cannot conclude that the appealed 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, 176 (Tex. 1986).

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **FIRE & CASUALTY INSURANCE COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge