

APPEAL NO. 040866  
FILED MAY 20, 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 March 8, 2004. The hearing officer resolved the disputed issue by determining that the appellant's (claimant) \_\_\_\_\_, compensable injury does not extend to include an injury to his neck. The claimant appealed, essentially asserting that he sustained his burden of proof, and charging that the hearing officer applied an incorrect standard of proof. The respondent (carrier) responded, asserting the claimant's appeal was not timely filed, and otherwise urging affirmance.

DECISION

Affirmed.

Since it is jurisdictional, we first address the question of the timeliness of the claimant's appeal. Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was mailed to the claimant on March 23, 2004, and deemed to have been received on March 28, 2003. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)). Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Rule 143.3(c) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

The claimant's request for review was both mailed to the Commission and postmarked on April 16, 2004, and the Commission received it on April 19, 2004. Thus, since the claimant mailed his request for review to the Commission within 15 days (15th day was April 16, 2004), and it was received within 20 days (20th day was April 21, 2004), of the date the claimant was deemed to have received the hearing officer's decision, the claimant's request for review is timely. See Section 410.202(a); Rule 143.3(c).

The claimant had the burden to prove the extent of his compensable injury. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351

S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's extent-of-injury determination is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We note that on appeal, the claimant asserts that the hearing officer considered "evidence" not presented at the hearing in reaching his determination, and that the claimant was held to a "great weight of the evidence" standard as opposed to the proper "preponderance of the evidence" standard. The claimant does not identify the evidence which he believes the hearing officer improperly relied upon, and nothing in our review of the record indicates that the hearing officer applied an incorrect legal standard.

The hearing officer's decision and order are affirmed.

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

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

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Daniel R. Barry  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge