

APPEAL NO. 041021
FILED JUNE 21, 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 (CCH) was held on April 8, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable injury, in the form of an occupational disease, with a date of injury of _____, and that the claimant had disability from November 20, 2002, through January 3, 2003. The appellant (carrier) appealed the hearing officer's determinations as being contrary to the evidence. The carrier also contends that the hearing officer erred in failing to add the issue of whether the claimant timely reported a work-related injury to her employer as required by Section 409.001. The claimant responded, urging affirmance.

DECISION

Affirmed.

We first address the issue of whether the hearing officer erred in not adding the issue of timely notice. The carrier argues that this issue was discussed at the benefit review conference (BRC), but that the benefit review officer failed to include the timely notice issue in his BRC report. The hearing officer determined that the carrier did not request the addition of a disputed issue pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(e) (Rule 142.7(e)). The hearing officer commented at the CCH that the BRC was held in January 2004, and that the CCH was scheduled for April 8, 2004, giving the carrier sufficient time, approximately three months, to request that an issue be added pursuant to Rule 142.7(e). The hearing officer found that the carrier did not have good cause for failing to request that an issue be added pursuant to Rule 142.7(e). We review the decision of the hearing officer to add or not to add an issue on an abuse-of-discretion standard. There is an abuse of discretion when a decision maker reaches a decision without reference to guiding rules or principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). In light of the carrier's failure to follow the procedures set out in Rule 142.7 to add an issue, we cannot say that the hearing officer abused her discretion by refusing to add the issue of timely notice.

We have reviewed the complained-of injury and disability determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not 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).

We affirm the hearing officer's decision and order.

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Margaret L. Turner
Appeals Judge