

APPEAL NO. 041487  
FILED AUGUST 5, 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 May 10, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, while in the course and scope of his employment and that because the claimant did not sustain a compensable injury, he did not have disability. The claimant appealed on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance and asserting that the claimant's appeal is untimely.

DECISION

Affirmed.

With regard to the timeliness of the claimant's appeal, records of the Texas Workers' Compensation Commission (Commission) indicate that the hearing officer's decision was mailed to the claimant on May 27, 2004, at the address given by the claimant. Pursuant to Rule 102.5(d), the claimant was deemed to have received the hearing officer's decision five days later, on June 1, 2004. Although the claimant asserts in his appeal that he received the hearing officer's decision on June 2, 2004, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. Thus, the deemed date of receipt is June 1, 2004.

The 15th day after the deemed date of receipt of June 1, 2004, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was June 22, 2004. The claimant's appeal was sent by facsimile transmission (fax) to the Commission on June 22, 2004, and the faxed copy was received on that same date. The mailed copy is postmarked June 18, 2004. The claimant's appeal is timely.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on \_\_\_\_\_. The claimant had the burden of proof on the injury issue and it presented a question of fact for the hearing officer to resolve. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this instance, the hearing officer

simply did not believe the evidence tending to demonstrate that the claimant sustained damage or harm to the physical structure of his body on \_\_\_\_\_, while engaged in an activity that originated in and had to do with the employer's business and that was performed by the claimant in furtherance of the business or affairs of the employer. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record demonstrates that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** 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.**

\_\_\_\_\_  
Veronica L. Ruberto  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Daniel R. Barry  
Appeals Judge

\_\_\_\_\_  
Elaine M. Chaney  
Appeals Judge