

APPEAL NO. 042056  
FILED OCTOBER 4, 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 July 19, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that because there was no compensable injury, there can be no resultant disability; and that the respondent (carrier) has not waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022. The claimant appealed, disputing the determinations of the hearing officer. The carrier responded, urging affirmance.

DECISION

Affirmed as reformed.

We reform the hearing officer's decision and order to identify American Zurich Insurance Company as the carrier in the caption rather than American Zenith Insurance Company. The cover sheet attached to the decision and order, the carrier information sheet (Hearing Officer's Exhibit No. 2), and Finding of Fact No. 2 all reflect that the carrier was American Zurich Insurance Company. Therefore, we reform the caption of the hearing officer's Decision and Order to correct the clerical error and to conform to the evidence. Additionally, we note that the record reflected that the carrier was represented by (attorney 1) rather than (attorney 2) as stated in the Decision and Order.

**SPECIFICITY OF DISPUTE**

It was undisputed that the carrier timely disputed the claim by filing a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21). At issue was whether the language contained in the TWCC-21 was sufficient to raise a dispute of compensability of the claimed injury. It is well settled that "magic words are not necessary to contest the compensability" under Section 409.022. Texas Workers' Compensation Commission Appeal No. 941755, decided February 13, 1995 (quoting Texas Workers' Compensation Commission Appeal No. 93326, decided June 10, 1993). Rather we "look to a fair reading of the reasoning listed to determine if the [contest] is sufficient." *Id.* We have determined that the language questioning whether an injury had occurred was sufficient to demonstrate a dispute of compensability. Texas Workers' Compensation Commission Appeal No. 93658, decided September 14, 1993. The hearing officer's view that the language in the TWCC-21 adequately and specifically disputed the compensability of the injury, in our judgment, is not against the great weight of the evidence.

**COMPENSABILITY AND DISABILITY**

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). The hearing officer noted that there were numerous inconsistencies and a lack of specificity in the claimant's testimony and medical records and resolved the disputed issue of compensability against the claimant. 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, 176 (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.

We affirm the decision and order of the hearing officer as reformed.

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

**LEO F. MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge