APPEAL NO. 021023
FILED JUNE 20, 2002

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 3, 2002. With regard to the disputed issues the hearing officer determined that the respondent/cross-appellant (claimant) "has a herniated and extruded disc at L5-S1"; that the claimant did not sustain an injury in the course and scope of her employment on _____; that the claimant did sustain a compensable injury, as a matter of law; that the appellant/cross-respondent (carrier) did not timely contest compensability; that the carrier's contest of compensability was not based upon newly discovered evidence that could not reasonably have been discovered sooner; and that the claimant had disability from February 3, 2001, to the date of the CCH.

The carrier appeals the lack of timely contest of compensability and disability issues stressing that the claimant's testimony lacked credibility. The claimant, in a timely appeal and response to the carrier's request for review, appeals the injury in the course and scope issue on a sufficiency of the evidence basis and urges affirmance on the other issues. The carrier files a response to the claimant's appeal.

DECISION

Affirmed.

It is relatively undisputed that the claimant sustained an injury on _____ (not the injury at issue here). The claimant contends that she sustained a new lumbar spine injury on _____, lifting some boxes. The hearing officer commented that the "medical records do establish . . . that the claimant suffers from a herniated disk at L5-S1." How or when that injury may have been sustained is in dispute with conflicting evidence.

The carrier acknowledges it received written notice of the _____, injury on January 30, 2001, and began paying benefits on February 9, 2001. In a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated April 10, 2001, the carrier asserts that the "claimant went to the dr on _____, she did not report a [sic] injury of _____" and that carrier has suspended temporary income benefits. The carrier contends that, "Claimant had subsequently changed her date of injury [and] [o]nce the Carrier deciphered what in fact was the Claimant's correct date of injury . . ." it had acted diligently.

The hearing officer commented;

Section 409.021(c) provides that if a carrier does not contest the compensability of an injury on or before the 60th day after the date on which the carrier received written notice of the injury, the carrier waives its

right to contest compensability. Section 409.021(d) provides that a carrier may reopen the issue of compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier. The "new evidence" upon which Carrier based its dispute of compensability is Claimant's alleged failure, while in the emergency room on _____, to report that she had been injured that day. This is evidence which could reasonably have been discovered within 60 days had Carrier exercised due diligence in conducting its investigation of the claim.

The hearing officer's decision is both factually and legally supported by the evidence. Whether the claimant sustained an injury in the course and scope of employment is a question of fact that the hearing officer resolved in the carrier's favor and is supported by the evidence.

The hearing officer did not err in his determination and the decision on the issues is 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).

Accordingly the decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **PENNSYLVANIA GENERAL INSURANCE** and the name and address of its registered agent for service of process is

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C. J. FIELDS
5910 N. CENTRAL EXPRESSWAY
DALLAS, TEXAS 75206.

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Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Roy L. Warren
Appeals Judge