

APPEAL NO. 031441
FILED JULY 23, 2003

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 May 15, 2003. The hearing officer determined that (1) the appellant (claimant) did not sustain a compensable injury, including a low back injury, on _____; (2) the claimant did not have disability as a result of the alleged injury of _____; (3) the respondent (carrier) did not waive its right to dispute the claimed injury because it timely contested the injury in accordance with Section 409.021; and (4) the carrier is not entitled to repayment of benefits due to claimant knowingly or intentionally making a false or misleading statement, misrepresenting or concealing a material fact, or fabricating, altering, concealing, or destroying a document pursuant to Section 415.008. The claimant appealed the injury, disability, and waiver determinations on sufficiency of the evidence grounds and asserts that the hearing officer erred in admitting the carrier's "cert-21" contained in Carrier's Exhibit No. 8. The carrier urges affirmance. The hearing officer's determination with regard to the repayment of benefits was not appealed and is, therefore, final. Section 410.169.

DECISION

Affirmed.

We first address the claimant's assertion that the hearing officer erred in admitting the carrier's "cert-21," dated _____. The claimant objected to the admission of the document at the hearing, asserting that it was not exchanged within 15 days after he benefit review conference as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). The carrier admitted that it exchanged the document one day past the 15-day exchange period but asserted good cause. The carrier represented that the document had essentially become lost within its offices and, once found, it was immediately turned over to the claimant's attorney. Alternatively, the carrier requested that the hearing officer take official notice of the document, as a record of the Texas Worker's Compensation Commission (Commission) essential to the resolution of the waiver issue. The hearing officer admitted Carrier's Exhibit No. 8, on the carrier's alternate theory. Section 410.163(b) provides, in part, that a hearing officer shall ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made. In order to resolve an issue of waiver, a hearing officer must know the date on which the carrier agreed to pay or disputed benefits. For this purpose, we have, in analogous cases, required that a hearing officer take official notice of essential Commission records where compliance with the 1989 Act is at issue. See Texas Workers' Compensation Commission Appeal No. 941171, decided October 17, 1994; Texas Workers' Compensation Commission Appeal No. 002287, decided November 13, 2000; Texas Workers' Compensation Commission Appeal No. 010696, decided April 26, 2001; and Texas Workers' Compensation Commission Appeal No. 012101-s, decided October 22, 2001. Accordingly, we cannot

conclude that the hearing officer abused his discretion in admitting the carrier's cert-21. Morrow v. H.E.B. INC., 714 S.W.2d 297 (Tex. 1986).

The claimant also argues that it was error to consider the carrier's "cert-21" because "it's very submission to the Commission violated Rule 124.2(j)(1)." Rule 124.2(j)(1), regarding carrier reporting and notification requirements, provides, "Except as otherwise provided by this title, carriers shall not provide notices to the Commission that explain that benefits will be paid as they accrue." The carrier's "cert-21" was submitted to the Commission in accordance with procedures established by Advisory 2002-15, dated September 12, 2002, whereby the Commission will "provide an acknowledgement of an insurance carrier's agreement to pay benefits as they accrue and are due." The claimant contends that Advisory 2002-15 creates an ad hoc exception to Rule 124.2(j)(1), in violation of Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 548 (Tex. 1999). Whether the Commission exceeded its authority in issuing Advisory 2002-15 is a matter for the courts. See Texas Workers' Compensation Commission Appeal No. 010160, decided March 8, 2001. For the reasons stated above, we perceive no error in the hearing officer's admission of Carrier's Exhibit No. 8.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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).

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

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Edward Vilano
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge