

APPEAL NO. 032215
FILED OCTOBER 2, 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 August 1, 2003. With respect to the issues before him, the hearing officer determined that the appellant/cross-respondent (carrier) waived the right to contest compensability by not timely contesting the injury; that the respondent/cross-appellant (claimant) sustained a compensable injury on _____, by operation of law, even though the claimant was not injured in the course and scope of her employment as she claimed; and that the claimant had disability, as a result of the compensable injury, from October 17, 2001, to January 28, 2002. In its appeal, the carrier asserts error in each of those determinations. In her response the claimant urges affirmance of the carrier waiver and injury determinations. The claimant filed a cross-appeal, contending that the hearing officer erred in determining that her disability ended on January 28, 2002. The appeal file does not contain a response to the claimant's cross-appeal from the carrier.

DECISION

Affirmed.

The carrier did not advance a specific argument in regard to the waiver issue on appeal. It is undisputed that the carrier did not comply with the seven-day requirement to contest compensability of Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002); however, the carrier maintained that there nevertheless was no waiver in accordance with Continental Cas. Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.). In Williamson, the court held that "if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law." The Appeals Panel has held that Williamson is limited to situations where there is a determination that the claimant did not have an injury, that is, no damage or harm to the physical structure of the body, as opposed to cases where there is an injury, which was determined by the hearing officer not to be causally related to the claimant's employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002. In the instant case, the hearing officer noted that the claimant has an injury within the meaning of the 1989 Act, i.e., damage or harm to the physical structure of her body, and since that is supported by the evidence, Williamson is inapplicable. Accordingly, the hearing officer correctly determined that the carrier had waived its right to contest compensability in this case and that the claimant's injury of _____, became compensable as a matter of law because it is undisputed that the carrier failed to file its contest in accordance with Downs.

Finally, we briefly consider the claimant's cross-appeal of the hearing officer's determination that her disability ended on January 28, 2002. The hearing officer was apparently persuaded, in accordance with the claimant's testimony, that her surgeon

gave her a full-duty release on January 29, 2002, and did not believe her testimony that he did so in order to permit the claimant to obtain unemployment benefits rather than because he actually believed that she could return to work. Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202-2812.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge