

APPEAL NO. 991289

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 12, 1999. She (hearing officer) determined that: (1) the appellant (claimant) fell and bruised her right knee in the course and scope of employment; (2) claimant did not have disability; (3) claimant did not timely report her alleged injury; (4) claimant did not have good cause for the failure to report her alleged injury; and (5) claimant's injury is not compensable because there was no timely reporting of the injury. Claimant appeals the injury, disability, and timely notice determinations on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she did not timely report her injury to employer. Claimant asserts that Mr. C was her supervisor and that he had actual knowledge of the fall at work. The applicable law and our standard of review are stated in Section 409.001; Texas Workers' Compensation Commission Appeal No. 92037, decided March 19, 1992; Section 410.165(a); and Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Claimant testified that Mr. C walked up soon after she had stood up after her fall at work and that she told him and another person that she was all right, that it did not hurt, and that she did not want to see a doctor. Actual knowledge of an incident at work is not actual knowledge of an injury. Appeal No. 92037, *supra*. While there was evidence that Mr. C knew that claimant fell, there is nothing to show that he knew she sustained any damage or harm to her body. In fact, claimant told Mr. C that she was not hurt. We will not disturb the hearing officer's finding regarding timely notice because it is not against the great weight and preponderance of the evidence. Cain, *supra*. We note that claimant did not assert that she otherwise reported an injury to her employer.

Claimant challenged the determination that claimant did not sustain a compensable injury. Because claimant did not timely report an injury, her injury is not compensable. We affirm the hearing officer's determination in that regard.

Claimant contends the hearing officer erred in determining that she did not sustain a severe knee injury. Again, our appellate standard of review is stated in Cain and Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The hearing officer was the judge of the credibility of the witnesses and medical evidence. As the fact finder, she considered the issue of whether claimant sustained a severe knee injury and resolved this issue against claimant. The hearing officer determined that claimant bruised her knee. We will not substitute our judgment for hers in that regard because the hearing officer's determination is not so against the great weight and preponderance of the

evidence as to be clearly wrong or manifestly unjust. Cain, supra. Given our standard of review we will not overturn the hearing officer's decision. *Id.* Further, we would note that because claimant did not timely report her injury, carrier is relieved of liability under Section 409.002. Because benefits are not payable, there is no compensable injury.

Claimant contends the hearing officer erred in determining that she did not have "disability" for a longer period of time. The hearing officer made a finding that claimant did miss time from work due to the injury she sustained in the course and scope of employment. However, the hearing officer found that because there was no compensable injury, claimant did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). We affirm the hearing officer's disability determination.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge