

APPEAL NO. 000531

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 February 18, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____; whether the respondent (carrier) is relieved of liability under Section 409.002 because of claimant-s failure to timely notify his employer of the injury pursuant to Section 409.001; and whether claimant had disability. The hearing officer determined that claimant sustained an injury on _____; that the carrier is relieved of liability because of claimant-s failure to timely notify his employer of the injury; and that claimant did not have disability. Claimant challenges the determinations that he failed to provide timely notice of his injury and that he does not have disability and asks that we reverse the hearing officer-s decision and render a decision in his favor. The carrier responds, urging affirmance.

DECISION

Affirmed.

Claimant testified that in _____ or _____, he injured his left knee and underwent a knee replacement; that he was off work until he began working for the employer as a shuttle bus driver two days before the injury in this case; that his 1993 injury had resolved; and that at around 8:30 a.m. on _____, he stepped on a small rock as he stepped off the bus stairs and turned his left knee. He said the injury did not hurt bad at first but got worse as the day wore on; that after finishing his shift at about 5:30 p.m., he went home; and that he called his supervisor, Mr. Z, on August 2, 1999, and told him "that I hurt my knee and I had to go to the doctor." Claimant further stated that he did not see Mr. Z until about two months later although he called his office several times trying to contact him again.

Claimant-s Employee-s Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) was signed on September 22, 1999.

In his recorded statement of November 27, 1999, claimant stated, variously, that he told Mr. Z he had to go to the doctor; that he told Mr. Z he had hurt his knee; that he told Mr. Z he had to go to the doctor because the knee was starting to hurt again; and that he did not tell Mr. Z he hurt his knee on the job because the people on the bus saw him when he hurt his knee on the job.

In his recorded statement of December 20, 1999, Mr. Z stated that claimant told him his knee was bothering him and he would not be able to drive. Mr. Z said he concluded that this was a continuation of the problem claimant was already having.

In his recorded statement of December 20, 1999, Mr. T, the employer-s branch operations manager, stated that the first time claimant mentioned an injury was a week before the last week of September and that the report itself was actually taken on October 4, 1999.

Mr. T further stated that claimant said he injured himself helping a customer off a shuttle van and admitted that he had not reported the accident.

Claimant had the burden to prove by a preponderance of the evidence that he provided the employer with timely notice of his injury. Sections 409.001 and 409.002 provide, in part, that an employee shall notify the employer of an injury not later than the 30th day after the date on which the injury occurs and that failure to do so relieves the employer and the insurance carrier of liability unless the employer or the insurance carrier has actual knowledge of the employee's injury or the Texas Workers' Compensation Commission determines that good cause exists for failure to provide notice in a timely manner.

In Texas Workers' Compensation Commission Appeal No. 91016, decided September 6, 1991, the Appeals Panel, in reversing the decision of a hearing officer that the employee gave timely notice of a work-related injury, noted that in Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied) the employer had ample notice of the employee's back condition and treatment but that there was not notice within the required 30 days that the condition was work related. The Appeals Panel, citing DeAnda v. Home Insurance Company, 618 S.W.2d 529 (Tex. 1980), stated that "[t]o fulfill the purposes of the statutory notice requirements, the employer need only know the general nature of the injury and the fact that it is job related."

Claimant has challenged the findings that claimant first reported his _____, injury to the employer as a new injury, rather than a continuation of claimant's previous knee problems, a week before the last week of September, as evidenced by the statement of Mr. T; that the employer did not have actual knowledge that claimant sustained a new injury rather than a continuation of his previous knee problems prior to the time claimant first reported the _____, injury a week before the last week in September; and that claimant did not have good cause to delay the reporting of the _____, injury after August 3, 1999, the day that Dr. T released him from work due to his injury because if the injury was serious enough to treat with a doctor and be taken off work, there was no good cause to believe the injury was trivial.

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. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Concerning the issue of disability, the hearing officer further found that claimant has not been unable to obtain and retain employment at his preinjury wage because of a compensable injury. See Section 401.011(16). This finding is correct because the hearing officer

determined that claimant's injury of _____, is not compensable and we affirm that determination.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge