

APPEAL NO. 000811

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 March 29, 2000. The hearing officer concluded that the appellant (claimant) sustained an injury to his right wrist in the course and scope of employment; that the date of injury is _____; that the respondent (carrier) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer of the claimed injury under Section 409.001; and that the claimant had disability beginning on January 5, 2000, and continuing through the date of the CCH. The claimant has generally appealed this decision. The carrier urges the sufficiency of the evidence to support the decision.

DECISION

Affirmed as reformed.

Claimant testified that on _____, while employed as a cabinetmaker, he hurt his right wrist during the course of work that day and went to an emergency room (ER) for treatment where he was given medication and a wrist brace, taken off work for two days, and then released for light duty for two weeks. He acknowledged that the ER records reflect that he gave a history of injuring his right wrist at work that day lifting heavy wood and indicated he provided that history. Claimant said he returned to work after two days off and worked light duty for two weeks wearing the wrist brace. He conceded not reporting the wrist injury, explaining that both he and the doctor thought the injury was just a sprain; that he did not think a sprain was serious and did not realize it was a reportable as a workers' compensation injury; and that he submitted it under his group health insurance. Claimant further testified that while loading heavy cabinets onto a truck on _____, he felt pain in his right wrist; that he does not know if it was the same pain as he had on _____, but that the pain became progressively worse; that he saw Dr. P for his wrist pain on January 4, 2000, and was taken off work; and that on January 5, 2000, he first reported a right wrist injury to his supervisor. He indicated that he has not been released for return to work and has not worked since January 4, 2000. Claimant agreed that he told Dr. P he had been having wrist problems for three months. He also conceded having incorrectly answered questions in his statement to the adjuster concerning prior wrist injuries.

The hearing officer found that claimant sustained an injury to his right wrist during the course and scope of his employment on _____; that claimant reported his injury to his employer on January 5, 2000; that claimant did not act as a reasonably prudent person in failing to report his injury within 30 days of _____; that claimant did not have good cause for failing to report his injury within 30 days of _____; and that claimant was unable "to obtain or [sic] retain" employment at wages equivalent to his preinjury wage beginning on January 5, 2000, and continuing through the date of the hearing. Based on these findings, the hearing officer concluded that the date of injury is _____; that

claimant sustained an injury to his right wrist in the course and scope of his employment; that the carrier is relieved of liability under Section 409.002 because of claimant's failure to timely notify his employer pursuant to Section 409.001; and that claimant "had disability beginning on January 5, 2000, and continuing through the date of this hearing." The hearing officer also states in the decision portion of the Decision and Order that claimant "had disability" for that period.

Claimant had the burden to prove not only that he sustained an injury in the course and scope of his employment, a burden which he met, but also the burden to prove the date of the injury, his providing timely notice of the injury to his employer, and that he had disability. 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)). The Appeals Panel, an appellate reviewing tribunal, 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).

Since disability requires the predicate of a compensable injury (Section 401.011(16)), and since claimant's failure to timely report his injury resulted in his injury not being compensable, he cannot, by definition, have disability. Accordingly, we reform Conclusion of Law No. 6 and the Decision to state that claimant did not have disability.

We affirm the decision and order of the hearing officer, as reformed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge