APPEAL NO. 000891

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 March 30, 2000. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the respondent (carrier) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer of his injury under Section 409.001; and that claimant did not have disability. In his appeal, the claimant argues that each of those determinations is against the great weight of the evidence. In its response, the carrier asks that we not consider the claimant's appeal because it was not properly served on it. In the alternative, the carrier urges affirmance.

DECISION

Affirmed.

Initially, we will consider the carrier's assertion that we should not consider the claimant's appeal because it was not properly served on the carrier. At the outset, we note that the claimant's appeal was served on the carrier at the same address that was used on many medical reports and on the hearing officer's decision and order; thus, it is not apparent that an incorrect address was actually used. In any event, however, we have long recognized that the claimant's failure to properly serve a copy of the appeal does not affect the timeliness of the appeal or prevent its consideration, but may extend the time for the response to be filed. Texas Workers' Compensation Commission Appeal No. 92397, decided September 21, 1992.

The claimant testified that in June 1999 he was working part time as a maintenance worker for the (school district). He stated that he was a 12-year employee of the school district and that he began to work part time following his retirement from the district. On _____, the claimant was stripping wax on a cafeteria floor and he slipped and fell, hitting his head and right elbow and fracturing his right ribs. He continued to work until June 9, 1999, when he first sought medical treatment. At a _____, follow-up visit, the claimant was diagnosed with a right inguinal hernia. The claimant contended that _____, was the date of his injury. He further testified that he was not sure what had caused the hernia but he understood that a hernia can be caused by heavy lifting and he thought that his hernia was caused by the heavy lifting he performed at work. At another point in the hearing, the claimant testified that all he knew was that he did not have a hernia before he started working for the employer and that he was diagnosed with one before he was let go and that as a result he was sure that his hernia was work related.

The claimant has the burden to prove by a preponderance of the evidence that he sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality,

weight, and credibility of the evidence before her. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. The testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain his burden of proving the causal connection between his right inguinal hernia and his work. The hearing officer simply was not persuaded that the evidence presented by the claimant was sufficient to satisfy his burden of proof. The hearing officer was acting within her province as the fact finder in making that determination. Our review of the record does not reveal that the hearing officer's determination that the claimant did not sustain a compensable injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the hearing officer's determination that the 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). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

In his appeal, the claimant also contends that the hearing officer erred in finding that he did not timely report his injury to his employer. Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury in this case, no remedy is available even in the event that the hearing officer erred in making that determination. Accordingly, no purpose would be served in further consideration of the timely notice issue.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Gary L. Kilgore
Appeals Judge