APPEAL NO. 000906

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 April 12, 2000. With respect to the issues before him, the hearing officer determined that the respondent (carrier) is relieved of liability under Section 409.002 because of the appellant's (claimant) failure to timely notify the employer of his injury pursuant to Section 409.001; and that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy. In his appeal, the claimant essentially argues that the hearing officer's determination that he did not timely report his injury is against the great weight of the evidence. In its response, the carrier contends that the claimant's appeal is inadequate to satisfy the requirement of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3 (Rule 143.3) that it clearly and concisely rebut each issue on which the claimant seeks review. In the alternative, the carrier urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy.

DECISION

Affirmed.

Initially, we will consider the carrier's argument that the claimant's appeal is inadequate under Rule 143.3. We find no merit in this assertion. The claimant's appeal is adequate to raise a sufficiency challenge to the hearing officer's notice determination and it will be treated as such.

The claimant testified that on _____, he was working as a welder for the employer. The claimant stated that he injured his arms when the pin he was using to make fiber loops broke, causing his arms to spring away from his body. The claimant stated that he sought medical treatment for his arms on May 6, 1999, with Dr. L who placed him on light duty. The claimant stated that on May 7, 1999, he took Dr. L's light-duty restrictions to Mr. P, who in turn gave a copy of the restrictions to Mr. G. The claimant maintained that he told both Mr. P and Mr. G on May 7th that he had been injured at work. The carrier introduced affidavits from Mr. P and Mr. G in which both stated that the claimant did not report a work-related injury to them in May 1999 and that they first learned that the claimant was alleging that he sustained a _____, on-the-job injury on June 24, 1999.

The claimant had the burden to prove that he timely reported his injury to his employer in accordance with Section 409.001. That issue presented a question of fact for the hearing officer to resolve. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our

judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

As noted above, there was conflicting evidence on the issue when the claimant reported his injury to his employer. The claimant maintained that he reported that he had been injured at work on _____, to Mr. P and Mr. G on May 7, 1999. In their affidavits, Mr. P and Mr. G denied that the claimant reported an injury to them in May. They stated that they did not learn that the claimant was alleging that he had sustained a work-related injury until June 24, 1999. The hearing officer was acting within his province as the fact finder in deciding to give more weight to the evidence from Mr. P and Mr. G and in rejecting the claimant's testimony that he reported his injury to them on May 7, 1999. Nothing in our review of the record demonstrates that the hearing officer's determination that the claimant did not timely report his injury to his employer is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exist for us to disturb that determination on appeal. Cain, *supra*. And, as such, the hearing officer correctly determined that the carrier is relieved of liability pursuant to Section 409.002 because of the claimant's failure to timely report his injury.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge