APPEAL NO. 001087

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 April 24, 2000. The hearing officer determined that the appellant/cross-respondent (claimant) did not sustain a compensable injury on _____, and that he gave timely notice of the claimed injury. The parties stipulated that the respondent/cross-appellant (carrier) timely disputed the compensability of the claimed injury. The claimant appealed the finding of no compensable injury, expressing his disagreement with it. The carrier appealed the finding of timely notice, contending it was against the great weight and preponderance of the evidence. The carrier responded to the claimant's appeal that the portion of the decision appealed was supported by sufficient evidence and should be affirmed. In what can be construed as a response to the carrier's appeal, the claimant, through his father, asserts his disagreement with the carrier's appeal. Documents attached to this response, but not made part of the record of the CCH will not be considered on appeal. *See* Section 410.203(a).

DECISION

Affirmed.

The claimant asserted that on _____, he suffered a compensable injury of heat exhaustion or heat stroke from working outside. He went to a hospital emergency room (ER) on June 27, 1998, with complaints primarily of chest pressure. He remained in the hospital overnight and underwent several tests primarily addressed to whether he was having cardiac problems. The medical evidence is quoted at length in the decision and order of the hearing officer. Various medical opinions were that he was having non-cardiac, most likely musculoskeletal, pain; that he was definitely not having a heat stroke and (from the same doctor) that he was hospitalized for heat exhaustion; and that he most likely had symptoms of heat exhaustion.

The claimant had the burden of proving he sustained a compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did presented a question of fact for the hearing officer to decide. The hearing officer discussed extensively the medical evidence and concluded that the claimant did not meet his burden of proving a work-related injury. In his appeal, the claimant relies on the medical evidence favorable to his position. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer was required to consider all the evidence, assign to it the weight and credibility he believed it deserved, and then determine what facts had been established. In his role as fact finder, he did not find the claimant's evidence persuasive. Nor was he required to do so. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this

standard of review to the record of this case, we find the evidence sufficient to support the determination that the claimant did not sustain a compensable heat-related injury on _____, as claimed.

Although the carrier prevailed on the substantive merits, it appealed the finding of timely notice, arguing that the person who received the notice, Mr. D, was not a supervisory employee of the employer. The claimant worked for an employee-leasing service. Mr. D was the on-site supervisor for the company who leased the claimant's services. The hearing officer determined that the claimant's reporting of the claimed injury to Mr. D on _____, was effective notice. He based this determination on the recorded statement of Mr. M, who was the manager of the employee-staffing service. In that statement, Mr. M said that "most of the time when we have a workers' comp claim, we stress . . . to the employees to notify their supervisors immediately. They in turn notify us." The hearing officer inferred from this Mr. D was the type of supervisor to whom Mr. M gave authority to receive reports of injury. In its appeal, the carrier argues that Mr. M did not really mean this, and that the statement was not to be taken at face value, but rather that the injured worker had to report an injury to a branch office of the employer. It contends that Mr. M's statement, when taken in the context of all the evidence, including evidence that the claimant's wife also reported the claimed injury within days to a branch office, showed that Mr. M was not a supervisor of the claimant for notice purposes. The interpretation to be given Mr. M's statement was up to the hearing officer. To the extent that there may have been ambiguities in this statement or that it had to be further explained, it was up to the carrier to come forward with persuasive clarifying evidence. We find no merit in the carrier's appeal.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Dorian E. Ramirez
Appeals Judge