

APPEAL NO. 001089

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 11, 2000. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on _____; (2) the respondent (carrier) is relieved of liability because of claimant's failure to timely notify her employer pursuant to Section 409.001; (3) claimant did not have disability; (4) carrier is relieved of liability as the claimant did not timely file a claim for compensation with the Texas Workers' Compensation Commission (Commission) and no good cause existed for failure to timely file; and (5) that claimant is barred from pursuing workers' compensation benefits because of an election of remedies. Claimant appealed these adverse determinations on sufficiency grounds. She also asserts that the hearing officer abused his discretion in admitting certain exhibits. Carrier responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant first contends the hearing officer erred in determining that she did not sustain a compensable injury. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he or she sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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 great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The hearing officer summarized the evidence in his decision. Briefly, claimant testified that she sustained a compensable injury on _____, when her foot fell through a pallet and she fell back on a concrete floor. Claimant said she reported her injury to her supervisor and that she also told Ms. V, the personnel coordinator, about it on the following Monday after the Friday injury. Claimant said Ms. V told her that she could not file a workers' compensation claim because claimant had not immediately reported the injury before she went to the doctor. Ms. V testified that claimant told her about back pain and that she would have to miss time from work. Ms. V said claimant did not say she had an injury. Ms. V testified that claimant agreed that she wanted to take "family medical leave." Claimant filed a claim with the Texas Workers' Compensation Commission (Commission) on November 9, 1999. Claimant said she had filed a prior workers' compensation claim for an injured finger.

The hearing officer was the judge of the credibility of the witnesses and medical evidence. As the fact finder, he considered the issue of whether claimant sustained a compensable injury on _____, and resolved this issue against claimant. We will not substitute our judgment for his in that regard because the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Claimant also contends the hearing officer erred in determining that she 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). Because there was no compensable injury, there can be no disability.

Claimant contends the hearing officer erred in determining that she did not timely report her injury to employer. The applicable law and our standard of review are stated in Section 409.001; Texas Workers' Compensation Commission Appeal No. 92397, decided September 21, 1992; Section 410.165(a); and Cain, supra. Claimant testified that she reported her injury within 30 days. The hearing officer determined that claimant did not timely report her injury. We will not disturb the hearing officer's good cause finding in this regard because it is not against the great weight and preponderance of the evidence. Cain, supra.

Claimant contends the hearing officer erred in determining that she made a knowing election of remedies in this case. In Texas Workers' Compensation Commission Appeal No. 991934, decided October 11, 1999, the Appeals Panel noted that in Bocanegra v. Aetna Life Insurance Company, 605 S.W.2d 848 (Tex. 1980), the court stated that the election of remedies doctrine may constitute a bar to relief when (1) one successfully exercises an informed choice (2) between two or more remedies, rights or states of fact (3) which are so inconsistent as to (4) constitute manifest injustice. The Appeals Panel noted in Appeal No. 991934 that the carrier has the burden of proving an effective election of remedies and that whether an election has been made is generally a question of fact for the hearing officer to decide. Under the facts of this case, we conclude that the hearing officer's findings are supported by sufficient evidence and are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). We note that this issue is moot, in effect, because the hearing officer determined that claimant did not sustain a compensable injury.

Claimant complains that the hearing officer determined that she did not timely file a claim. Section 409.003 provides that a claim for compensation must be filed with the Commission within one year of the date of injury. Failure to do so, in the absence of good cause, relieves the employer and carrier of liability for the injury. Section 409.004. The test of good cause is that of ordinary prudence, that is, did the claimant exercise the degree of diligence that a person of ordinary prudence would have exercised under the same or similar circumstances. Claimant argues on appeal that she did not file a claim because Ms. V discouraged her from doing so. Claimant also asserts that she did not fully understand how the system worked. The hearing officer found that claimant was not credible in her testimony regarding reporting the injury to Ms. V. It was during that

conversation that claimant alleges that Ms. V misled her and discouraged her from filing a workers' compensation claim. Further, ignorance of the law generally does not constitute good cause. Texas Workers' Compensation Commission Appeal No. 971670, decided October 9, 1997. The hearing officer was not satisfied that claimant established good cause for her late filing. From our review of the record, we conclude that the evidence was sufficient to support this determination.

Claimant contends that the hearing officer abused his discretion in admitting carrier's exhibits one through four. Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; see *also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Appeal No. 951943; *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986).

In this case, the complained-of evidence was relevant regarding whether claimant had any experience with workers' compensation claims and the issues of timely filing of a claim and election of remedies. The hearing officer did not abuse his discretion in admitting the evidence. Even if there had been an abuse of discretion, any possible error was not reasonably calculated to cause nor did it probably cause the rendition of an improper judgment.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy Lueders
Appeals Judge