

APPEAL NO. 001180

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 26, 2000. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury; (2) claimant's average weekly wage is \$705.50; (3) claimant did not have disability; and (4) claimant did not timely report his injury to his employer. Claimant appeals only the injury, disability, and timely notice determinations. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he did not sustain a compensable injury and that he did not have disability. Claimant asserts that: (1) the hearing officer failed to consider the evidence; (2) the evidence shows that he sustained an injury and had disability from January 1, 2000, to the date of the CCH; (3) employer's witnesses were biased; and (4) claimant timely reported his injury to his employer.

The hearing officer summarized and discussed the facts in his decision and order. Briefly, claimant said he slipped, almost fell, and hurt his back on _____. Claimant testified that he did not fall, but the records of Dr. P were at odds with this testimony in that the records said claimant did fall. Claimant said he continued to work until December 31, 1999, when he stopped working because of pain. There was evidence that claimant told two employees that he should come up with a back injury so that he could draw workers' compensation benefits.

The applicable law regarding injury and disability issues and our standard of review are set forth in Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992; Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); and Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The matters claimant raises in his brief involved credibility and fact issues, which the hearing officer resolved. A review of the decision and order indicates that the hearing officer did not believe claimant's testimony about his alleged injury. The hearing officer was acting within his province as fact finder in deciding what evidence he believed. The hearing officer stated that claimant did not meet his burden of proof. Regarding assertions that the hearing officer misstated the evidence, we conclude that the hearing officer, after judging the credibility of the evidence, could have made the conclusions he did from the evidence before him. Regarding whether the hearing officer improperly considered hearsay, we note that the rules of evidence do not apply at hearings before the Texas Workers' Compensation Commission. Section 410.165(b). There is nothing in the record to suggest that the hearing officer did not consider the evidence before him. The hearing officer's

determination that claimant did not sustain a compensable injury is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain. Because claimant did not have a compensable injury, he did not have disability. Disability, by definition, requires that there must have been a compensable injury. Section 401.011(16).

Claimant contends the hearing officer erred in determining that he did not timely report his alleged injury. The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. Claimant testified that he reported his alleged injury to Mr. G the day after it occurred, but this was denied by Mr. G. The hearing officer resolved the conflicts in the evidence and determined that claimant did not timely report the claimed injury. We conclude that the hearing officer's determinations regarding timely notice are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

Claimant complains that the hearing officer did not consider evidence of administrative violations by the employer. However, the Appeals Panel does not have jurisdiction regarding alleged administrative violations and we conclude that the hearing officer could properly exclude evidence in this regard. *See, generally*, Section 410.203(a). Claimant complains that the hearing officer did not recuse himself after it was discovered that the hearing officer was a customer of claimant's employer. The hearing officer stated on the record that he knew many people in the area and that he could be impartial. Claimant represented at the CCH that it was not a problem if the hearing officer heard the case. Therefore, claimant acquiesced to the hearing officer's action and waived any possible error by not objecting at the CCH.

In the "summary and prayer" portion of his brief, claimant contends that the hearing officer erred in failing to add an issue regarding carrier waiver. Carrier objected when claimant sought to add the issue. The hearing officer determined that there was no good cause to add an issue. An issue regarding carrier waiver was not reported out of the benefit review conference (BRC) and the record does not contain a response to the BRC report. Carrier waiver cannot be raised for the first time at a CCH absent consent of the parties or a showing of good cause. Texas Workers' Compensation Commission Appeal No. 61115, decided July 25, 1996; Section 410.151(b); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(b) and (e) (Rule 142.7(b) and (e)). The hearing officer did not add the issue or make fact findings regarding carrier waiver. We have reviewed the record and we conclude that the hearing officer did not abuse his discretion in refusing to add the carrier waiver issue.

Claimant contends that the hearing officer was biased, behaved in a hostile manner, attempted to control claimant's closing argument, and failed to explain the determinations in the decision and order. It appears that the hearing officer was attempting to guide the presentation of the evidence and argument in order to obtain answers to questions he had. The record does not reflect any bias or reversible error. Regarding an explanation of his

determinations, again, the hearing officer said that claimant did not meet his burden of proof. Clearly, the hearing officer did not find claimant's testimony credible.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Dorian E. Ramirez
Appeals Judge

Kathleen Decker
Appeals Judge