APPEAL NO. 001472

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 June 1, 2000. The record closed on June 9, 2000. The hearing officer determined that: (1) appellant (claimant) did not sustain a compensable injury on _____; (2) claimant is not entitled to rights and remedies under the 1989 Act; (3) claimant failed to timely report an alleged _____, injury to his employer and did not have good cause for such failure; and (4) claimant did not have disability. The claimant appealed the injury, disability, and timely notice determinations on sufficiency grounds. He also contends that he is entitled to benefits under the 1989 Act because he was recruited and hired in Texas. Respondent (carrier) responded 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 is not entitled to rights and remedies under the 1989 Act. He asserts that he was hired and recruited in Texas and that he is entitled to benefits under the 1989 Act. Claimant said his friend, Mr. M, called and told him about potential work in (State 2) with (employer). Claimant said Mr. M relayed that he had talked to Mr. C, who worked for employer, and that Mr. C said the job is available for claimant. Claimant said Mr. M said he had given claimant's name to Mr. C. Claimant said he, himself, talked to Mr. C about the rate of pay, although Mr. C denied this. Claimant said he began working in State 2 for employer in September 1999. He said he sustained a work-related injury when he slipped and fell on his buttocks at work. Mr. C testified that claimant was hired for one job only and that he was laid off after his cement work was finished. Mr. C said that claimant did not report a work-related injury until after the lay off.

Whether or not an employee has been recruited in Texas is a question of fact for the hearing officer to resolve and each of these cases turns on its own unique set of facts. Texas Workers' Compensation Commission Appeal No. 960572, decided May 3, 1996, is somewhat similar to the case before us. In that case, the injured employee's friend had telephoned an out-of-state employer about employment. The friend was told that he could have a job if he came to that out-of-state location. The friend was also told that the employer would provide some reimbursement for travel and lodging. The friend then asked if other hands were needed and was told he could bring someone with him. The friend then contacted the injured employee/claimant in that case, who expressed interest. The friend then called the employer back and provided the employer with information about the claimant in that case. After the injured employee and his friend went to the job location, the employer reimbursed them for travel and three days of lodging before they actually started working. The hearing officer determined that while the injured employee had not been actually hired in Texas, he had been recruited in Texas. The Appeals Panel affirmed,

noting evidence that it was a part of the duties of the employer's representative who spoke with the friend on the phone to identify qualified potential employees. The Appeals Panel also noted that the hearing officer could consider the employer's offer to reimburse travel and lodging as evidence of recruiting.

In the case before us, there was no evidence of any financial incentive offered by the employer for prospective employees to come to the out-of-state job site to apply for jobs. Mr. C said that he spoke to claimant's friend, Mr. M, but Mr. M did not tell him that Mr. M was bringing anyone with him to work in State 2. Mr. C said he did not have knowledge of an additional worker or of claimant's name until claimant was hired in State 2 in September 1999. We conclude that the hearing officer's determinations in this regarding are 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.)

Claimant contends that he sustained damage or harm to his body when he slipped and fell on wet cement. He also contends that, because of that injury, he was unable to obtain and retain employment at wages equivalent to the preinjury wage.

The hearing officer heard claimant's testimony and reviewed the medical evidence. The hearing officer believed that claimant's testimony regarding his claimed injury was not credible and that any injury claimant had was due to an accident claimant sustained while off-duty, working on a co-worker's car. There was evidence to support the hearing officer's determinations in this regard. Because there was no compensable injury, there can be no disability. Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id*. The hearing officer's injury and disability determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Claimant contends the hearing officer erred in determining that he did not timely report his injury. There were some conflicts in the evidence regarding the claimed date of the injury and what date of injury claimant reported. Claimant testified that he was injured on _____. However, Mr. C said claimant never reported an October 1999 injury, that claimant mentioned pain twice but did not say it was work related, and that claimant asked to see a doctor for chest pain, but did not say it was work related. Mr. C said he did not find out that claimant claimed a work-related injury until mid-November 1999. The hearing officer reviewed the evidence and determined what facts were established. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge