

APPEAL NO. 002181

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 September 5, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; (2) claimant did not have disability; and (3) claimant did not timely report his claimed injury. Claimant appealed these determinations on sufficiency grounds. 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 did not sustain a compensable injury and that he did not have disability. The applicable law regarding injury and disability issues and our standard of review are set forth in Texas Workers' Compensation Commission Appeal No. 001819, decided September 18, 2000. At the hearing, claimant said his injury in this case is "occupational bronchitis" and "occupational asthma."

Claimant testified that he was working as an electrician at a site where repairs needed to be made after an electrical fire. The destroyed area was to be cleared and new equipment installed. Claimant said he worked for about 10 hours on _____, and for about 16 or 17 hours beginning _____. He said he was working around soot and dust and shoveled in the manhole for two to three hours at one point. He said he was covered in soot after working, that his eyes were red and burning the night of _____, that he was coughing up blood and soot the night of _____, and that he went back to work _____, at about 7.00 a.m. He said he became very ill later and stayed in bed. Claimant testified that he called Mr. E, a supervisor, on _____, and said he was coughing up blood and "black stuff," and that "it's directly related to the job." Mr. E denied that claimant called to report an injury and said that claimant called in early July 1999 to ask about the termination slip that had been sent terminating claimant's employment. In an August 1999 report, Dr. D diagnosed claimant with asthmatic bronchitis "related to an irritant fume exposure." There was evidence that claimant "never" worked in the manhole in July 1999, that he was the most "clean" of the workers working around the soot, that it appeared that he had tried to avoid working by trying to chat with a supervisor, and that claimant had worked with Mr. E before in 1995, and that Mr. E had decided back in 1995 that claimant was not a good worker.

The hearing officer reviewed the evidence regarding the claimed injury and determined that claimant did not sustain a compensable injury. 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 simply did not believe that claimant sustained a work-related injury. The hearing officer was acting within his

province as fact finder in deciding what evidence was credible. After reviewing the evidence, 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). 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.

Claimant contends the hearing officer erred in determining that he did not timely report his injury. There were some conflicts in the evidence regarding whether claimant reported the injury. Claimant testified that he told Mr. E about his injury a few days after his exposure to the soot and dust. However, Mr. E denied that claimant called to report an injury on July 5, 1999, and said that claimant called regarding the termination slip. There was evidence that employer found out that claimant was claiming an injury when it received notice from the Texas Workers' Compensation Commission in August 1999. Claimant's contention was that the injury was timely reported on _____. The hearing officer reviewed the evidence and determined what facts were established. We conclude that the hearing officer's determinations in this regard 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:

Kenneth A. Huchton
Appeals Judge

Robert W. Potts
Appeals Judge