

APPEAL NO. 002282

On August 28, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____; that the claimant timely notified his employer of his injury; and that the claimant has had disability from March 21, 2000, through the date of the CCH. The appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. The claimant asserts that the carrier's appeal was not timely filed and requests that the hearing officer's decision be affirmed. The carrier's appeal was timely filed because the 15th day after receipt of the hearing officer's decision was a Saturday, and thus the due date was extended to Monday, October 2, 2000. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.3(a)(3).

DECISION

Affirmed.

The claimant worked as a pipe fitter for the employer. He testified that on _____, he was performing his job duties installing two-inch boiler pipes, which required him to bend the pipes by pushing up on them, when he had pain in his neck that went down his left arm. He said that he immediately reported his injury to his supervisor, MA, on the day he was injured. MA confirmed that the claimant immediately reported his work injury to him. The claimant was terminated from employment on February 8, 2000, for being absent from work. TH, MA's supervisor, testified that neither the claimant nor MA told him that the claimant had been injured prior to February 8 when he terminated claimant's employment. TH said that he first learned that the claimant was claiming a work injury three or four weeks after February 8. ML, TH's supervisor, stated that the claimant did not report an injury to him.

The claimant went to Dr. B on February 14, 2000, complaining of pain in his neck and left arm that had developed one and one-half weeks before February 14 when he was performing his job duties as a pipe fitter and Dr. B referred the claimant to Dr. W. The claimant said that he worked for several days for another employer but was unable to continue to work. Documents indicate that that work was between February 23 and March 1, 2000.

Dr. W testified that he began treating the claimant on March 21, 2000, for the claimant's injury of _____; that an EMG done on March 22, 2000, revealed C7 radiculopathy; that a cervical MRI done on March 28, 2000, showed a herniated disc at C6-7 which causes an extra-dural defect on the thecal sac; that the claimant has been unable to work since March 21, 2000; and that in his opinion, the claimant's neck injury occurred as a result of the claimant's pipe-fitter work.

Dr. H reviewed the claimant's March 28, 2000, MRI at the carrier's request and opined that the MRI findings preexisted the claimant's claimed injury of _____.

The claimant had the burden to prove that he was injured in the course and scope of his employment, that he gave timely notice of injury to his employer, and that he had disability. The hearing officer found that the claimant sustained damage or harm to the physical structure of his cervical region in the course and scope of his employment on _____; that the claimant has been unable to obtain and retain employment at wages equivalent to his preinjury wage because of the compensable injury of _____, from March 21, 2000, to the date of the CCH; and that on _____, the claimant notified the employer of his injury by notifying his supervisor, MA, of his injury on that date and thus notice of injury was given within the required 30-day period. The hearing officer decided that the claimant sustained a compensable injury on _____; that the claimant has had disability from March 21, 2000, through the date of the CCH; and that the carrier is not relieved of liability under Section 409.002. The carrier appeals the hearing officer's decision on all issues, contending that the decision is so against the great weight and preponderance of the evidence as to be manifestly unjust.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and determines what facts have been established from the evidence presented. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Susan M. Kelley
Appeals Judge