

APPEAL NO. 002496

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 October 4, 2000. The hearing officer determined that: (1) the appellant/cross-respondent (claimant) did not sustain an injury in the course and scope of his employment; (2) he did not have disability; (3) he did not timely report his alleged injury to his employer; and that (4) respondent/cross-appellant (carrier) did not waive the right to contest compensability in this case. Carrier filed a motion that it later asked the Appeals Panel to consider as an appeal concerning the finding of fact that "carrier was notified of the alleged injury on March 6, 2000." Claimant did not respond to this alleged appeal. Claimant appealed the determinations regarding injury, disability, and timely notice on sufficiency grounds. Carrier responded that the complained-of determinations were correct. The determinations regarding carrier waiver were not appealed, except for the purported appeal by carrier of the above-mentioned finding of fact.

DECISION

We affirm.

We first address carrier's motion and request for review. Carrier filed a motion for clerical correction on October 18, 2000. The director of hearings denied the motion, stating that the complained-of finding of fact did not contain a typographical error. Any appeal by carrier was due by Friday, October 27, 2000. Carrier did not file an appeal by that date, but on November 2, 2000, filed a request that the Appeals Panel treat its motion as an appeal. We decline to treat the motion as a request for review. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 140.5 (Rule 140.5) permits the correction of clerical errors. The motion was not filed as an appeal, so it was not processed as an appeal. We do note that if carrier had filed its motion and asked, in the alternative, that it also be treated as an appeal, and filed it within the time required for appeals, the Appeals Panel would consider it as an appeal. There was nothing to prevent carrier from filing both an appeal and a motion to protect its position. However, carrier's request to treat the motion as an appeal came after the time for filing an appeal had passed. Therefore, we conclude that no timely appeal was filed by carrier.

In his appeal, 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.

Claimant is a truck driver who was in a work-related motor vehicle accident (MVA) on _____. It was undisputed that employer's long haul truck that claimant was driving was "totaled" in the MVA. The hearing officer discussed the evidence in his decision and order and noted the delay in the development of symptoms in this case. We note that one medical report dated about two months after the _____, MVA stated

that claimant presented with neck pain and that he had been in an MVA, but that he did not have symptoms after the MVA. 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 an injury in the MVA. 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 alleged injury. One of claimant's supervisors, Mr. G, said he went to the scene of the MVA, that claimant said he was "fine," and that claimant drove his personal truck to get a drug screen that day. Mr. G testified that the next day he asked claimant if he felt in shape to drive another load and claimant said, "no problem." Mr. G also said he asked claimant whether he was "stiff from the wreck" and claimant said, "yes." The hearing officer determined that claimant did not report an injury at that time and that he did not have good cause for waiting to report his injury until March 6, 2000. 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:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge