APPEAL NO. 002707

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 30, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that he did not timely report his alleged injury to his employer; and that he has not had disability because he did not sustain a compensable injury. In his appeal, the claimant essentially argues that the hearing officer's injury, notice, and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that he injured his low back lifting automotive parts and driving a truck in the course and scope of his employment as a delivery person for the employer. The claimant underwent a lumbar MRI on July 6, 2000, which revealed degenerative disc changes and a 5 mm herniation at L4-5 and a disc bulge at L5-S1. The claimant testified that he first told his employer that his back problem was work-related on April 26, 2000, when a nurse from the doctor he was attempting to see under his HMO called the employer to advise the employer that the claimant could not pursue treatment for a work-related injury under his group health coverage. The claimant submitted an April 26, 2000, report from the clinic stating that the claimant called his employer from the front desk and that the nurse "advised them we could not process work-related injury and we do not do work-comp claims." Two supervisors from the employer testified that they did not learn that the claimant was alleging a work-related injury until May 30, 2000, when the claimant came to the employer's office and asked to complete an injury report. The supervisor, who the claimant stated was contacted by the doctor's office on April 26, 2000, testified that he could not recall such a conversation; however, he stated that it could have occurred.

The claimant contends that the hearing officer's determination that he did not sustain a compensable injury is against the great weight of the evidence. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where, as here, there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determinations are not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Reviewing the hearing officer's determination that the claimant did not sustain a compensable injury under that standard, we find no sound basis to disturb that determination on appeal because the hearing officer was acting within his province as the fact finder in rejecting the evidence tending to establish a causal connection between the claimant's back condition and his employment.

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

Our review of the record demonstrates that the hearing officer's determination that the claimant did not timely report his alleged injury and, thus, that the carrier would be relieved of liability for this claim under Section 409.002 if the claimant had sustained a compensable injury is against the great weight of the evidence. The claimant testified and the April 26, 2000, medical record from the clinic confirms, that on that date a nurse from the doctor's office and the claimant called and spoke to a supervisor with the employer and advised that the claimant could not seek treatment under his group health insurance because his injury was work related. That evidence on its face was compelling evidence of notice of an alleged work-related injury within the 30-day period provided for giving notice to the employer under Section 409.001 and the hearing officer provided no explanation for having rejected the evidence. As such, the hearing officer's determinations that the claimant did not satisfy the requirements of Section 409.001 and that the carrier is relieved of liability under Section 409.002 are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, we reverse those determinations and render a new decision that the claimant timely reported his alleged injury to the employer and that the carrier would not be relieved of liability had the claimant sustained a compensable injury. However, given our affirmance of the hearing officer's determination that the claimant did not sustain his burden of proving that he sustained a compensable injury, the reversal of the notice determination does not change the outcome of this case.

The hearing officer's determinations that the claimant did not sustain a compensable injury and that he did not have disability are affirmed. The hearing officer's determination that the claimant did not timely report his alleged injury to his employer is reversed and a new decision rendered that the alleged injury was timely reported under Section 409.001 and, therefore, the carrier would not be relieved of liability under Section 409.002.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Thomas A. Knapp
Appeals Judge