

APPEAL NO. 002924

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 November 28, 2000. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained an injury in the form of an occupational disease; that the date of injury is _____; that the claimant timely reported his injury to his employer; that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election of remedies; and that the claimant had disability, as a result of his compensable injury, from _____, through July 6, 2000. In its appeal, the appellant (carrier) contends that each of those determinations is against the great weight of the evidence. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in making her injury, date-of-injury, or notice determinations. There was conflicting evidence presented on each of those issues. The factors that the carrier emphasizes in its appeal were also emphasized at the hearing. The significance, or lack thereof, of those factors on the hearing officer's determination of the weight and credibility to assign to the evidence was a matter left to her discretion as the fact finder under Section 410.165(a). Nothing in our review of the record demonstrates that the injury, date-of-injury, or notice determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse those determinations on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier also asserts error in the hearing officer's having determined that the claimant did not make an election of remedies by pursuing medical treatment under his group health insurance after his workers' compensation claim had been denied. The carrier notes that the claimant acknowledged at the hearing that he knew the difference between workers' compensation and group health insurance. Such evidence falls far short of establishing the requirements of Bocanegra v. Aetna Life Ins. Co., 605 S.W.2d 848 (Tex. 1980) such that an election could be found. See Texas Workers' Compensation Commission Appeal No. 001283, decided July 14, 2000.

The success of the carrier's argument that the claimant did not have disability is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the injury determination, we likewise affirm the determination that the claimant had disability from _____ to July 6, 2000.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge