

APPEAL NO. 010358

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 January 18, 2001. The hearing officer held that the appellant (claimant) did not sustain an injury on _____; did not timely report her injury to her employer (and had no good cause for the failure to timely report the injury); and did not have disability as defined by the 1989 Act.

The claimant argues that medical evidence supports her claim of an injury and that she could not timely report it as she was not thinking clearly at the time due to occupational stress. The respondent (carrier) responds that the decision should be affirmed, and that occupational stress could not have been a factor because the claimant was not working for the employer during much of the period she could have reported the injury timely.

DECISION

We affirm the hearing officer's decision.

The hearing officer has fairly summarized the facts and explained her reasoning and weighing of evidence in the case. We cannot agree that she erred in finding that the claimant had not proven that she sustained damage or physical harm on _____, while performing her job. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In this case, there is support in the record for the decision.

We likewise cannot agree that the hearing officer erred by finding that timely notice was not given and that there was no good cause for late notice. In this regard, we note that the claimant first testified that she did not realize that her knee was as bad as it turned out to be and that she could not afford to be out of work. She later contended that it was the stress of finding out the seriousness of the knee condition that precluded reporting. As the hearing officer noted, the contention that there was good cause due to "trivializing" the seriousness of the injury ceased to exist when the claimant knew and realized that her condition would require surgery, yet did not report it for another month, and there is no legal basis for finding good cause due to "stress."

Finally, we cannot agree that the hearing officer erred by finding that the claimant did not have disability. A threshold finding for "disability" as defined in Section 401.011(26) of the 1989 Act is that there be a compensable injury. As the hearing

officer found no compensable injury, there can be no disability. We affirm the hearing officer's decision and order on all appealed points.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge