

## APPEAL NO. 010378

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 25, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that the claimant did not timely report her alleged injury to her employer; and that the claimant did not have disability within the meaning of the 1989 Act because she did not sustain a compensable injury. In her appeal, the claimant contends that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

### DECISION

Affirmed.

The claimant has the burden to prove by a preponderance of the evidence that she sustained a compensable injury and that she timely reported the alleged injury to her employer. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Those questions presented the hearing officer with questions of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before him. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence, including the medical evidence, and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. An appeals-level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied). There was conflicting evidence on the issue of whether the claimant sustained a work-related injury and whether she advised her employer that she was claiming a work-related injury within the 30-day period specified for doing so in Section 409.001. The hearing officer was acting within his province as the fact finder in determining that the claimant did not sustain her burden of proving that she sustained a compensable injury and that she timely reported the injury to her employer. As the fact finder, the hearing officer was free to discount the claimant's evidence that she was injured assisting a patient on \_\_\_\_\_, and that she reported her injury to her employer within 30 days of the date of alleged injury. Our review of the record does not demonstrate that the hearing officer's injury and notice determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

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

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge