APPEAL NO. 010398

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 23, 2001, the hearing officer resolved the disputed issues by concluding that the date of the appellant's (claimant) injury is _____; that the claimant did not sustain a compensable injury in the form of an occupational disease; that the respondent (self-insured) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer of the claimed injury pursuant to Section 409.001; and that the self-insured did not waive its right to dispute the compensability of the claimed injury by not contesting the injury pursuant to Section 409.021. The claimant has requested our review and asserts that these determinations are against the great weight of the evidence. The self-insured urges in response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The hearing officer did not err in making the disputed factual findings and conclusions. The claimant testified that on January 21, 1992, while employed by the self-insured as a fireman, he got blood on his hands and arms while assisting with the victim of a suicide; that in April and May 1999 testing revealed that he had hepatitis C; and that he could have contracted this disease from the exposure to the suicide victim's blood. He conceded that he had no evidence of the suicide victim's having hepatitis C. The claimant further testified that he "clearly recalled" having a conversation within the first two weeks of _____ with his treating doctor, Dr. H, about his having contracted hepatitis C through contact with blood on the job. He said he advised Dr. H that he had not been an intravenous drug user and had monogamous relationships and asked Dr. H if his exposure on the job to contaminated blood could have caused the hepatitis C and that Dr. H stated that it could. He also stated that he did not know his hepatitis C was work-related until receiving in January 2000, a letter to that effect which he had requested from Dr. H. The claimant further stated that on January 20, 2000, he told Chief A that he had been diagnosed with hepatitis C and that his doctor felt it was job-related and he provided Chief A with the information for the Employer's First Report of Injury or Illness (TWCC-1). He also said that on February 3, 2000, he told Mr. A, an adjuster, about his injury.

The carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), dated "02/21/2000" and received by the Texas Workers' Compensation Commission (Commission) on February 23, 2000, references an injury date of "_____" and disputes a claim for hepatitis C on the grounds that it is an ordinary disease of life and that the claimant failed to timely report the injury. Another TWCC-21, also received by the Commission on February 23, 2000, refers to the date of injury as "_____" and defends on the grounds of lack of causation, ordinary disease of life, untimely reporting of injury, and untimely claim. Both forms reflect that the self-insured first

received written notice of the injury on "2-18-00." The claimant conceded in argument below that his evidence relating the cause of his hepatitis C to exposure to contaminated blood on the job was not strong; however, he urged that he timely reported the injury in January 2000 and that the carrier waived its right to contest the compensability of the claimed injury because it filed TWCC-21 forms referencing two different dates of injury but not a third injury date mentioned in a Commission letter to the claimant dated May 20, 2000.

The claimant had the burden of proof on the disputed issues by a preponderance of the evidence. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel will not disturb the challenged factual determinations of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge