

APPEAL NO. 010403

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 9, 2001. The hearing officer resolved the issues at the CCH by determining that the appellant (claimant) did not sustain a compensable injury on _____, and that he therefore had no disability. The hearing officer further concluded that the claimant did not timely report the alleged injury to his employer and that his employer was not SMPI, who had workers' compensation coverage with the respondent (carrier). The claimant appeals and seeks a remand. The carrier responds, asserting that the evidence is sufficient to support the decision and order of the hearing officer.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____, and did not timely report the claimed injury to his employer. The evidence on these issues was in substantial conflict. The hearing officer observed that the medical evidence in the record reflected that the claimant reported having incurred an injury at home on January 15, 1999, a nonwork-related injury on January 25, 1999, and a work-related injury on _____. The hearing officer also noted that while the claimant testified that he reported his work-related injury to a coworker on _____, the owner of SMPI, Mr. S, testified that the claimant reported an at-home injury to the owner's son approximately two days later and that the actual employer was not made aware of the claimed injury until after January 2000.

Notwithstanding the conflicting evidence, the hearing officer did not err in determining that the claimant was not the employee of the carrier's insured, SMPI. The hearing officer noted the evidence as indicating that the claimant was an employee of employer, the sister corporation of SMPI. The evidence on this issue was also in conflict. Mr. S testified that the claimant's job application was for employment with the employer, his paychecks were drafted by the employer, and his tax information listed the employer as his employer. Conversely, the claimant testified that he believed he was an employee of SMPI because it shared a location and phone number with the employer, because some equipment, including the truck he drove, was marked "SMPI," and because the phone was answered "[SM]."

Since we affirm that the claimant sustained no compensable injury, he could not have disability. Section 401.011(16) of the 1989 Act.

Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey,

508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not upset the challenged factual findings 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. 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). We do not find them so here.

For these reasons, we affirm the hearing officer's decision and order.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge