

APPEAL NO. 010630

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 March 1, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that he timely reported his alleged injury to his employer; that he did not timely file a claim with the Texas Workers' Compensation Commission (Commission), without good cause for his failure to do so; and that he did not have disability because he did not sustain a compensable injury. In his appeal, the claimant challenges the hearing officer's determinations that he did not sustain a compensable injury, that he did not have disability, and that the respondent (carrier) would be relieved of liability under Section 409.004 because of his failure to timely file a claim as against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury. That question presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer resolves the conflicts and inconsistencies in the evidence, and determines what facts have been established from the evidence. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ; St. Paul Fire & Marine Ins. Co. v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb 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). The hearing officer was acting within his province as the fact finder in determining that the claimant did not sustain his burden of proving that he was injured at work on _____. Nothing in our review of the record demonstrates that the hearing officer's determination in that regard is so contrary to the great weight of the evidence as to compel its reversal on appeal.

The hearing officer likewise did not err in determining that the carrier would be relieved of liability if the claimant sustained a compensable injury because of the claimant's failure to file a claim with the Commission within the one-year period provided for doing so without good cause for his failure to do so. The hearing officer was not persuaded by the claimant's testimony that his delay in filing his claim was attributable to representations from the employer that it did not have workers' compensation coverage. As the fact finder, the hearing officer was free to discount the evidence supporting that assertion of good cause and to determine that the claimant, through the exercise of ordinary diligence, should have filed his claim prior to September 3, 1999, more than two years after his alleged injury. The hearing officer's determination that the carrier would be relieved of

liability under Section 409.004 is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, we will not disturb that determination. Cain, *supra*.

Given our affirmance of the determinations that the claimant did not sustain a compensable injury and that he did not timely file his claim, we likewise affirm the determination that he did not have disability within the meaning of the 1989 Act. 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.

Elaine M. Chaney
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge