

APPEAL NO. 010657

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 February 14, 2001. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable occupational disease injury (hearing loss); that the date of injury is _____; and that the carrier is not relieved of liability pursuant to Section 409.002 because of the claimant's failure to timely report his injury to his employer in accordance with Section 409.001. In its appeal, the appellant (self-insured) asserts that each of those determinations is against the great weight of the evidence. In his response to the self-insured's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable hearing loss injury. The question of whether the claimant sustained a compensable injury was a question of fact for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence has established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In this instance, there is sufficient evidence in the record to support the hearing officer's determination that the claimant sustained a compensable injury. The hearing officer's injury determination is not so against the great weight of the evidence as to compel its reversal on appeal.

The date-of-injury issue under Section 408.007 was also a question of fact for the hearing officer to resolve. The hearing officer acted within his role as the fact finder in crediting the evidence from the claimant that it was not until _____, that he first realized that his hearing loss was or could be related to his employment when he had a hearing test, over the selfinsured's evidence tending to demonstrate that the claimant knew or should have known at a much earlier date that his hearing loss may have been caused by his exposure to noise at work. Nothing in our review of the record demonstrates that the hearing officer's date-of-injury determination is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, it will not be disturbed on appeal.

The success of the self-insured's argument that the claimant did not timely report his injury is dependent upon the success of its argument for an earlier date of injury. Given our affirmance of the determination that the date of injury is _____, we likewise affirm the determination that the self-insured is not relieved of liability under Section 409.002 because the claimant reported his injury to his employer on October 6, 2000, well within the 30-day period provided for doing so in Section 409.001

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge