

## APPEAL NO. 010679

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 7, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease injury; that she did not timely report her alleged injury to her employer; that no one in a supervisory or management position with the employer had actual knowledge of the alleged injury; 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 asserts that each of those determinations is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

### DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury; that the claimant did not timely report her alleged injury; and that the employer did not have actual knowledge of the alleged injury within 30 days of the date of injury. Those questions presented questions 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). There was conflicting evidence presented on the issue of injury, timely reporting, and actual knowledge. The hearing officer was acting within his province as the fact finder in resolving those conflicts against the claimant and in determining that the claimant did sustain her burden of proving that she sustained a compensable occupational disease injury, that she timely reported her alleged injury, or that the employer had actual knowledge thereof. Nothing in our review of the record demonstrates that the hearing officer's injury, notice and actual knowledge determinations are so contrary to the great weight of the evidence as to compel their reversal on appeal.

Given our affirmance of the injury and notice determinations, we likewise affirm the 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.

---

Elaine M. Chaney  
Appeals Judge

CONCUR:

---

Judy L. S. Barnes  
Appeals Judge

---

Gary L. Kilgore  
Appeals Judge