

APPEAL NO. 010910
FILED JUNE 12, 2001

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 April 10, 2001. With respect to the issues before her, the hearing officer determined that the appellant (claimant) sustained an injury in the course and scope of his employment on _____; that he did not timely report his injury to his employer without good cause for his failure to do so; that the respondent (carrier) is therefore relieved from liability under Section 409.002; and that the claimant did not have disability because he did not sustain a compensable injury. In his appeal, the claimant asserts error in the determination that he did not timely report his injury to his employer, that he did not sustain a compensable injury, and that he did not have disability. In its response to the claimant's appeal, the carrier urges affirmance. Neither party appealed the hearing officer's factual determinations that the claimant sustained an injury in the course and scope of his employment on _____, or that he was unable to obtain and retain employment, as a result of the claimed injury from May 17, 2000, through March 9, 2001. Accordingly, those determinations have become final under Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the carrier is relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer of his injury under Section 409.001. The question of whether the claimant timely reported his injury to his employer was a question of fact for the hearing officer. 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 determine 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 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 or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In this instance, there was conflicting evidence on the issue of whether the claimant reported his injury to his employer within the required 30-day period. The claimant testified that he reported his injury to Mr. AM, one of his supervisors, on the day it happened and that he also reported it to Mr. FM, another supervisor, on the following day. However, Mr. AM testified that the claimant never reported a _____, work-related injury to him and that he did not learn that the claimant was alleging that he sustained an on-the-job injury to his shoulder until May 17, 2000, when he was so advised by an employee in the employer's office who received a call from a doctor's office on behalf of the claimant

seeking information about the employer's workers' compensation coverage. The hearing officer resolved that conflict by accepting Mr. AM's testimony over that of the claimant. She was acting within her province as the fact finder in so doing. Nothing in our review of the record demonstrates that the hearing officer's determination that the claimant did not timely report his injury to his employer is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to disturb the hearing officer's notice determination on appeal. Cain, *supra*.

Both parties allege that the hearing officer made clerical errors in her Findings of Fact and Conclusions of Law; however, we find no merit in this assertion. A review of the decision demonstrates that the hearing officer determined that the claimant injured himself at work on _____, lifting plywood and that as a result of that injury, he was unable to obtain and retain employment at his preinjury wage for the period from May 17, 2000, to March 9, 2001. However, she further determined that the claimant did not timely report his injury to his employer; thus, the carrier is relieved from liability for the injury in the claimant's injury in the course and scope of his employment. Given these determinations, the hearing officer's legal conclusions that the claimant did not sustain a compensable injury and that he did not have disability are correct and are not, as the parties claim, inconsistent with her factual determinations concerning injury and disability. Given our determination that no clerical errors exist, we further determine that no modification of the hearing officer's Findings of Fact or Conclusions of Law is indicated in this instance.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge