

APPEAL NO. 010984
FILED JUNE 13, 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 3, 2001. The hearing officer determined that the claimant: did not sustain a compensable injury on _____ [see paragraph below]; did not make a timely report of an injury to the employer, or have good cause for failing to report; did not make an election to receive benefits under a group health policy instead of pursuing workers' compensation; and did not have disability because there was no compensable injury. The claimant has appealed the adverse determinations, on sufficiency of the evidence grounds. The respondent (carrier) has responded, and urges that the hearing officer's determinations be affirmed.

DECISION

Affirmed as modified.

Compensable Injury

The hearing officer misstates the date of injury in his Statement of the Evidence, Conclusion of Law No. 3, and Decision paragraph. The correct alleged date of injury was _____, and we modify the hearing officer's report to make the correction.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The claimant had the burden to prove that he sustained damage or harm to the physical structure of his body, arising out of and in the course and scope of his employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue. The claimant continued to work for several months after the alleged injury doing work that was described as "heavy." His job required him to lift heavy objects, to wear a 35 to 40 pound tool belt, and occasionally climb 20 feet off the ground to work. The claimant drove 200 miles round trip each day to his job; was regarded by coworkers as a good worker; and worked a large amount of overtime between _____ and October, 2000. Coworkers reported that the claimant told them that he was involved in a motor vehicle accident in September or October 2000 and was "roughed up" by police during a DUI apprehension, and that his reports of injury did not begin until after those incidents. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate-reviewing tribunal, 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 and we do not find them so in this case. 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).

Notice of Injury

The hearing officer did not err in determining that the claimant failed to timely notify his employer of a work-related injury and did not have good cause for such failure to do so. Section 409.001(a) provides, in relevant part, that an employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which the injury occurred. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the carrier of liability, unless the employer or carrier has actual knowledge of the injury, good cause exists, or the claim is not contested. Section 409.002. Conflicting evidence was presented with regard to this issue; the claimant alleged that he told the foreman about his injury the same day that the injury occurred and the foreman denies that he had any knowledge of a work-related injury, until November 2000. The hearing officer's determination that the claimant failed to timely notify his employer of the alleged injury is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra. Additionally, we cannot conclude that the hearing officer abused his discretion in determining that good cause did not exist for such failure to timely notify.

Disability

The hearing officer did not err in determining that the claimant did not have disability from the alleged injury. The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant was found to have not sustained a compensable injury, the hearing officer properly concluded that the claimant did not have a disability.

The decision and order of the hearing officer, as modified, are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge