

APPEAL NO. 011046
FILED JUNE 7, 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 19, 2001. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on _____; (2) that the claimant did not have disability; and (3) that the respondent (carrier) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify the employer pursuant to Section 409.001. The claimant has appealed these adverse determinations, arguing that he met his burden of proof on the issues. The carrier responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed.

Compensable Injury

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 the 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, including the relation of three different versions of when the alleged injury happened, which changed as the claimant was confronted with information casting doubt on each previous version. There was also evidence that the claimant told coworkers and supervisors he had been the victim of a hit and run nonwork-related motor vehicle accident with a whiplash injury, on September 20, 2000, without any mention of a work-related injury. 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).

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 not to sustain a compensable injury, the hearings officer properly concluded that the claimant did not have a disability.

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 notify. 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 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.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge