

APPEAL NO. 011081
FILED JULY 05, 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 25, 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 the claimant did not timely notify his employer pursuant to Texas Labor Code Section 409.002; that the respondent (carrier) is relieved from liability because of the claimant's failure to give timely notice; and that the claimant did not sustain a compensable injury or have disability. In his appeal, the claimant challenges the hearing officer's determination that he did not timely report his injury. The appeals file does not contain a response to the claimant's appeal from the carrier.

DECISION

Affirmed.

Issues of timely notice and good cause for failure to timely report an injury present questions of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93761, decided October 4, 1993. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). There is sufficient evidence in the record to support the hearing officer's determinations that the claimant did not timely report his injury to his employer and that he did not have good cause for his failure to do so. The hearing officer was not persuaded that a reasonably prudent person would have waited until November 29, 2000, to report an _____, injury, when he had been taken off work and prescribed medication for that injury before the expiration of the 30-day notice period. Our review of the record does not demonstrate that the hearing officer's determination that the claimant did not have good cause for his failure to timely report his injury 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 reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951).

Having affirmed the hearing officer's notice determination, we likewise affirm her determinations that the claimant did not sustain a compensable injury and did not have disability. The phrase "compensable injury" is defined as "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). Because the claimant did not give timely notice of his injury to his employer, the carrier is relieved from liability. Thus, the hearing officer did not err in determining that the claimant did not sustain a compensable injury or have disability.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge