

APPEAL NO. 011099  
FILED JUNE 18, 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 (CCH) was held on April 26, 2001. The hearing officer resolved the three disputed issues by deciding the following:

1. The appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on \_\_\_\_\_.
2. The claimant did not report an injury to the employer on or before the 30th day after the injury and did not have good cause for failing to report the injury timely.
3. The claimant did not have disability.

The claimant has filed a request for review of the hearing officer's findings of facts and conclusions of law on the disputed issues. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

At the outset of the hearing, the carrier stated its agreement that based on Hearing Officer's Exhibit No. 1, the report of the benefit review conference (BRC) held on February 26, 2001, the three disputed issues before the hearing officer were as stated above. The claimant's attorney stated that the issues of timely notice and disability should not be considered by the hearing officer for resolution because they were neither raised nor discussed at the BRC. The carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), dated October 23, 1998, which is in evidence, reflects the carrier's positions, including the contentions that no temporary income benefits are due and that the alleged new injury of \_\_\_\_\_, was not reported until October 16, 1998. The BRC report reflects that the attorney representing the claimant at the CCH was not present at the BRC. The file does not reflect that the claimant filed a response to the BRC report pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7 (Rule 142.7). The hearing officer overruled the claimant's objection to proceeding with the timely notice and disability issues. We do not find abuse of discretion in this ruling. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). Following the ruling, the claimant's attorney announced that "this hearing is over," confirmed that the claimant would offer no evidence, and told the hearing officer to "go ahead and make [his] decision and send it to Austin." The claimant and her attorney then left the hearing room.

The claimant had the burden of proof on the three disputed issues by a preponderance of the evidence. She put on no evidence. 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, 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).

The hearing officer's decision is affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Elaine Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge