

APPEAL NO. 011150
FILED JULY 03, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on April 25, 2001, the hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on _____, and did not timely report the claimed injury; and that since there was no compensable injury, the claimant did not have disability. The claimant has appealed on evidentiary sufficiency grounds, restating the evidence he believes met his burden of proof on the disputed issues, and further stating that the employer did not present evidence to refute the claimant's testimony that he timely reported the injury. The response filed by the respondent (carrier) urges the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain an occupational disease injury on _____; did not timely report such injury; and did not have disability. The claimant testified that on _____, he was backing a forklift out of a truck and his left hand, with which he was steering the forklift, got caught in the steering wheel as it was turning and he felt "a shocking pain." He said he reported the injury that day to his supervisor, Mr. R, who asked him to finish his shift; that sometime later Ms. E from human resources suggested that he hold off going to a doctor until he qualified (after 90 days of employment) for health insurance; that he first sought treatment from Dr. E, his treating chiropractor, on November 17, 2000; and that Dr. E has treated his wrist injury ever since and has not released him to return to work. The claimant also said that he was later seen by a company doctor who told him he had a sprained wrist and to return to work with restrictions; that he did so and was asked to paint walls but did not do it; and that he has not since earned any wages. He also mentioned having been treated by Dr. E for injuries he sustained in a motor vehicle accident he was involved in on January 8, 2001, and not having mentioned that event to either of two specialists to whom he was referred.

The hearing officer did not find the claimant's evidence persuasive and commented that the claimant's "testimony and demeanor were less than credible." 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 (Gaza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, 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).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chancy
Appeals Judge

Thomas A. Knapp
Appeals Judge