

APPEAL NO. 011192
FILED JULY 11, 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 May 3, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury to the cervical spine, left shoulder, and right shoulder on _____; that he did not timely report the injury to his employer and did not have good cause for failing to do so; that because he did not have a compensable injury, he did not have disability; and that he did not make an informed election of remedies other than workers' compensation. The claimant generally appeals the adverse determinations on sufficiency of the evidence grounds. The determination of the election of remedies issue, not having been appealed, has become final. Section 410.169. The respondent (carrier) contends in response that the claimant has not sought review of the timely notice determination and that the evidence is sufficient to support the adverse determinations of the hearing officer.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury to his cervical spine and shoulders on _____; that he failed to give timely notice to the employer of his claimed injury and did not have good cause for such failure; and that he did not have disability. The claimant testified that on _____, while removing a blade from a garbage truck, he injured his neck and both shoulders; that on December 6, 1999, he reported this injury to his supervisor, Mr. F; and that he had disability from December 15, 1999, to either August 12 or August 17, 2000. He did concede that he did not discuss filing a workers' compensation claim until sometime in July 2000 when, apparently, his group health insurance benefits were exhausted. Dr. GS, who reviewed the claimant's medical records for the carrier, testified that the claimant underwent cervical spine fusion surgery in December 1991 and March 1995 and that an MRI report reflected no evidence of a new cervical spine injury. He further testified that the reports of MRI tests of the shoulders showed the left shoulder as normal and the right shoulder as having arthritis, evidence of an old dislocation, and a suggestion of a rotator cuff tear, conditions he did not believe resulted from the claimed injury of _____. Dr. GS also stated that the records of Dr. LS, who first saw the claimant on December 18, 1999, reflect no range of motion or neurological deficits and only subjective complaints of pain which Dr. LS recognized with a diagnosis of strain.

The appealed issues, for which the claimant had the burden of proof, involved questions of fact for the hearing officer to resolve. 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 (Garza 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:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge