

APPEAL NO. 011231
FILED JULY 13, 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 May 15, 2001. The hearing officer resolved the disputed issues by determining the following:

1. The appellant (claimant) did not sustain a compensable injury on _____;
2. The respondent (carrier) is relieved from liability pursuant to Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001; and,
3. The claimant did not have disability as a result of the injury sustained on _____, beginning October 30, 2000, and continuing through April 29, 2001.

The claimant appeals each and every finding of fact and conclusion of law made by the hearing officer. The carrier urges affirmance.

DECISION

Affirmed.

The evidence sufficiently supports the hearing officer's determination that the claimant failed to prove, by a preponderance of the evidence, that she sustained a compensable injury in the course and scope of employment on _____, and that she had disability. Section 401.011(10) defines a compensable injury as one that arises out of and in the course and scope of employment for which compensation is payable. Section 401.011(16) provides that disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. The hearing officer was not persuaded by the claimant's testimony or the medical reports in evidence.

The hearing officer did not err in determining that the claimant failed to timely notify her 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 her 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts 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 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, supra; In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge