

APPEAL NO. 011234
FILED JULY 11, 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 2, 2001. The hearing officer determined that: (1) the date of the alleged injury was _____; (2) the appellant (claimant) did not sustain a compensable injury on _____; (3) the claimant did not timely report an injury to his employer and did not have good cause for such failure, thereby relieving the respondent (carrier) of liability for any injury; and (4) the claimant did not have disability. The claimant appeals the injury, notice, and disability determinations on sufficiency grounds. The carrier urges affirmance. The hearing officer's decision with regard date of injury was not appealed by either party and is, therefore, final.

DECISION

Affirmed.

Compensable Injury

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The claimant had the burden to prove that he sustained damage or harm to the physical structure of the body, arising out of and in the course and scope of his employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue, including evidence of a subsequent motor vehicle accident. 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 including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer's determination that the claimant did not sustain a compensable 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 (Tex. 1986).

Notice of Injury

The hearing officer did not err in determining that the claimant failed to timely notify the employer of a work-related injury and did not have good cause for failure to timely notify, and that the carrier is relieved from liability for this claim. 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. There was conflicting evidence presented with regard to this issue. The hearing officer

could believe the testimony of the employer over that of the claimant, and conclude that the claimant failed to timely notify his employer of the alleged injury without good cause. The hearing officer's determination that the claimant did not sustain a compensable injury is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Disability

The hearing officer did not err in determining that the claimant did not have disability. The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have a disability.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge