

APPEAL NO. 011275
FILED JULY 17, 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 16, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease, with a date of injury of _____, and that the respondent (carrier) is relieved of liability under Section 409.002 because of the claimant's failure to notify his employer pursuant to Section 409.001. The claimant has appealed these adverse determinations, arguing that he met his burden of proof, and that he made a timely notification to his employer. The carrier urges that the Appeals Panel affirm the decision and order of the hearing officer.

DECISION

Affirmed.

Compensable Injury

The hearing officer did not err in determining that the claimant did not sustain a compensable injury in the form of an occupational disease (hearing loss), with a date of injury of _____. 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 evidence presented which showed that the claimant has been exposed to loud noises in connection with his employment as a millwright for nearly 15 years, including during his eight days of employment with the employer in this case. The medical evidence, however, did not persuade the hearing officer that the work-related exposure to noise caused the injury in this case. 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 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).

Notice of Injury

The hearing officer did not err in determining that the claimant failed to timely notify his 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 whether the claimant timely notified the employer of a work-related injury. The hearing officer's determination that the claimant failed to timely notify his 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, *supra*.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge