

APPEAL NO. 011328
FILED JULY 18, 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 (CCH) was held on March 13, 2001, and May 16, 2001. The hearing officer determined that (1) the appellant (claimant) did not have good cause for failure to appear at the CCH on March 13, 2001; (2) the claimant did not sustain a compensable injury on _____; and (3) claimant did not have disability. The claimant appeals the determinations on sufficiency grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

Failure to Appear

The hearing officer did not err in determining that the claimant did not have good cause for failure to appear at the CCH on March 13, 2001. We review good cause determinations under an abuse of discretion standard. Texas Workers's Compensation Commission Appeal No. 002251, decided November 8, 2000. The hearing officer's determination will not be set aside unless the hearing officer acted without reference to any guiding rules or principles. See Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We have held that the appropriate test for the existence of good cause is that of ordinary prudence; that is, the degree of diligence an ordinarily prudent person would have exercised under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994. It is undisputed that the claimant had ample notice of the hearing convened on March 13, 2001, but failed to appear due to claimant's mistake with regard to the time the hearing was to be held. In view of the circumstances, we cannot conclude that the hearing officer abused her discretion in determining that good cause did not exist for claimant's failure to appear at the CCH on March 13, 2001.

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. 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 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).

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 the a finding of disability. Section 401.011(16). Because the claimant was found not to have sustained 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:

Robert E. Lang
Appeals Panel
Manager/Judge

Michael B. McShane
Appeals Judge