

APPEAL NO. 011369
FILED JULY 25, 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 begun on January 21, 2001, was continued on April 2, 2001, and was continued and ended on June 1, 2001. The hearing officer determined the following:

1. That the date of the alleged injury is _____;
2. That the appellant (claimant) did not sustain a compensable injury on _____; _____; _____, or on any other relevant date;
3. That the claimant did not report an injury to the employer or to a person in a supervisory or management position with the employer on or before the 30th day after the alleged injury;
4. That good cause does not exist for failing to report the injury timely; and,
5. That the claimant has not had disability resulting from the injury.

The claimant filed a request for review of the hearing officer's determinations. The respondent (self-insured employer) responds, urging affirmance.

DECISION

Affirmed.

The evidence sufficiently supports the hearing officer's determinations regarding compensability and disability. Section 401.011(10) provides that a compensable injury is an injury which 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 and the medical records in evidence that he sustained a work-related injury on _____ as he claimed.

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 the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, 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). This is equally true regarding medical evidence. Texas Employers Insurance Association v.

Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer found that the claimant's neck and right shoulder problems existed before the alleged incident as evidenced by the medical records. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

The claimant asserts on appeal that the self-insured employer's exhibits were excluded from the record. We disagree. The review of the record of this case establishes that the Self-Insured Employer's Exhibit Nos.1-14 were admitted by the hearing officer on April 2, 2001. The claimant objected to the Self-Insured Employer's Exhibit Nos. 10 and 12-14. The hearing officer overruled the claimant's objections and admitted the Self-Insured Employer's Exhibit Nos. 10, 13 and 14, and admitted the Self-Insured Employer's Exhibit No. 12 "under advisement." We note that the hearing officer did not reverse his admission of Exhibit No. 12 after hearing all the evidence of the case.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge