

APPEAL NO. 011463  
FILED AUGUST 8, 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 June 11, 2001. With respect to the issues before him, the hearing officer determined that the appellant/cross-respondent (claimant herein) did not sustain a compensable injury on \_\_\_\_\_; that because the claimant had no compensable injury he had no disability; and that the respondent/cross-appellant (carrier herein) is relieved from liability because the claimant did not timely report the alleged injury to his employer. The claimant appeals, contending that the hearing officer's determinations are against the great weight and preponderance of the evidence. The carrier responds urging affirmance. The carrier also files a conditional request for review challenging the hearing officer's finding that the claimant was unable to obtain and retain wages equivalent to his preinjury wage for a period of time. There is no response from the claimant to the carrier's conditional request for review.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

There was conflicting evidence on the issue of injury. It was the province of the hearing officer to resolve any conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The question under our standard of review was whether the hearing officer's determinations were 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). Applying this standard, we find sufficient evidence to support the hearing officer's determination of no injury.

Section 409.001(b)(2) requires that a claimant give notice of an injury to the employer or to "an employee of the employer who holds a supervisory or management position." There was conflicting evidence as to whether the claimant reported an injury to a supervisor or to a coworker. A claimant's belief that the person to whom notice is given is a supervisor or manager does not establish this status. Whether and when the claimant gave his employer notice of his injury is also a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994. Again, applying our standard of review, we perceive no error in the hearing officer's determination that the claimant did not timely report his injury.

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition, disability depends upon a compensable injury. See Section 401.011(16). However, as there was evidence that the claimant was not able to work for a period of time, there was sufficient evidence to support the factual finding about which the carrier complains.

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Robert E. Lang  
Appeals Panel  
Manager/Judge