

APPEAL NO. 011464
FILED JULY 31, 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 June 5, 2001. The hearing officer determined that the appellant (claimant) did not timely notify her employer of a work-related injury pursuant to Section 409.001; that the respondent (carrier) is relieved from liability because of the failure to timely notify the employer; that the claimant did not sustain a compensable injury or have disability; and that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under a group health insurance policy. On appeal, the claimant expresses disagreement with the hearing officer's determination that she did not timely report an injury to her employer. The claimant urges that a new decision be rendered in her favor. The carrier urges affirmance.

DECISION

Affirmed.

Section 409.001 requires 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 occurs. Failure to do so, absent a showing of good cause or actual knowledge of the injury by the employer, relieves the carrier and employer of liability for the payment of benefits for the injury. Section 409.002. The claimant's testimony and that of the supervisor who testified at the CCH, are conflicting as to the date on which the claimant reported the work-related injury. The hearing officer determined that the claimant gave notice to her employer on _____, which was 31 days after the hearing officer determined that the injury occurred, and did not have good cause for the late reporting.

Whether, and, if so, when, notice is given is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93761, decided October 4, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. 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, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). As an appellate reviewing tribunal, the Appeals Panel 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. 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). We are satisfied that the disputed findings relating to the notice issue are sufficiently supported by the evidence.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge