

APPEAL NO. 011474
FILED JULY 23, 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 14, 2001. The hearing officer determined that: (1) the appellant's (claimant) date of injury was _____; (2) the claimant did not sustain an injury in the course and scope of his employment on either _____, or _____; (3) the respondent (carrier) waived the right to dispute compensability of the injury, except on the basis of a failure to provide timely notice under Section 409.001; (4) the claimant did not provide timely notice of the claimed injury to the employer under Section 409.001, and the carrier is relieved of liability for this claim pursuant to Section 409.002; and (5) the claimant has not had disability as a result of the claimed injury. The claimant has appealed the adverse determinations (identified as (1), (2), (4), and (5) above) on sufficiency of the evidence grounds. The carrier has responded, and urges that all of the appealed determinations be affirmed.

DECISION

Affirmed.

Each of the contested issues in this case required that the hearing officer make factual determinations from the evidence that was presented. Section 410.165(a) provides that 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. 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 trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The credibility of the claimant was the major issue in this case, and the hearing officer resolved the disputes in the evidence against the claimant, and there is evidence in the record which supports each of the determinations. We will reverse factual determinations of a hearing officer only if those determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and 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 credibility of the witness and the other evidence for that of the hearing officer.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge