

APPEAL NO. 011502
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 May 9, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the claimant did not sustain disability from a compensable injury; that the date of the injury was _____; and that the respondent (carrier) is relieved from liability because of the claimant's failure to timely notify her employer of her alleged injury. The claimant appeals, contending that the hearing officer's decision is against the great weight and preponderance of the evidence and that the hearing officer erred in not admitting Claimant's Exhibit Nos. 4, 5, and 6. The carrier responds, urging affirmance.

DECISION

Finding sufficient evidence in the record to support the hearing officer's decision and order, we affirm.

The exclusion of Claimant's Exhibit Nos. 4, 5, and 6 was not error. Even if the hearing officer's exclusion of the evidence was erroneous, it did not constitute reversible error. To obtain a reversal of a judgment based upon error in admission or exclusion of evidence, the complaining party must show that the determination was, in fact, error and that the error was reasonably calculated to cause and probably did cause rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. App.-San Antonio 1981, no writ).

We have reviewed the evidence in this case and find it sufficient to support the hearing officer's determination of the issues of injury, disability, and timely notification of the employer. As an appellate body, we will affirm a hearing officer's decision where it finds sufficient support in the evidence and is not so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

In regard to the claimant's alleged injury, the claimant had the burden to prove that she sustained damage or harm to the physical structure of the body, which arose out of and in the course and scope of her employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. Dr. S, in response to a Texas Workers' Compensation Commission inquiry, indicated that he could not give an opinion as to the cause of the claimant's condition. Moreover, the claimant's treating doctor, Dr. M, stated on September 7, 2000, that the claimant denies any trauma. There was conflicting evidence presented with regard to this issue and the hearing officer could have decided that the claimant did not sustain her burden of proof.

In regard to the date of injury, when the claimant completed the initial "Employee's Notice of Injury [TWCC-41]," she indicated that the first date that she knew her condition was work related was _____, the date the hearing officer found to be her date of injury. 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. There is evidence to support the hearing officer's determination of _____, as the date of injury. There is also evidence supporting the hearing officer's factual determination that the claimant did not report her injury until September 12, 2000. Thus, the hearing officer's conclusion that the claimant did not timely report her injury finds support in the record. See Section 409.001. In regard to the determination that the claimant did not give timely notice, even if the claimant's notice had been timely that would not affect the result, as we have affirmed the hearing officer's determination on the issue of injury in course and scope of employment.

In addition, the claimant contends that she has disability; however, the 1989 Act requires a finding of compensable injury as a prerequisite to a finding of disability. Section 401.011(16). See *also* Texas Workers' Compensation Commission Appeal No. 941379, decided November 29, 1994. Thus, where there is no finding of a compensable injury, there is no disability.

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)). We are satisfied that the disputed findings of fact on the date of injury, occupational disease injury, timely notice, and disability issues are sufficiently supported by the evidence and the inferences the hearing officer could reasonably draw from the evidence. 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).

Accordingly, the decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge