

APPEAL NO. 011617
FILED AUGUST 24, 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 15, 2001. The hearing officer determined that (1) the appellant (claimant) did not sustain a compensable injury; (2) the respondent (carrier) is relieved from liability under Section 409.002, because of the claimant's failure to timely notify her employer pursuant to Section 409.001; and (3) the claimant did not have disability. The claimant appeals the hearing officer's determinations on sufficiency grounds, and asserts that she received inadequate assistance from the ombudsman. The carrier urges affirmance.

DECISION

Affirmed.

We first address the matter of the claimant's dissatisfaction with the assistance of the ombudsman. An ombudsman is not a representative and is available to a litigant only to assist in the litigant's own presentation of his or her case. Section 409.041. From our review of the record, it appears that the claimant was given the opportunity to present evidence, cross-examine witnesses and evidence presented by the carrier, and argue her position. There is no indication in the record of the hearing that the claimant expressed any dissatisfaction with the assistance she received and our review of the record discloses no apparent basis for the assertion on appeal.

Compensable Injury

The hearing officer did not err in determining that the claimant did not sustain a compensable injury. The claimant had the burden to prove that her left eye injury arose out of and in the course and scope of her employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue. 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)). Upon review of the evidence, we cannot conclude that the hearing officer's determination is 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 (Tex. 1986).

Notice of Injury

The hearing officer did not err in determining that the carrier is relieved from liability for this claim because of the claimant's failure to timely notify her employer of a work-related injury. Section 409.001(a) provides, in relevant part, 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 occurred. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the carrier of liability, unless the employer or carrier has actual knowledge of the injury, good cause exists, or the claim is not contested. Section 409.002. We have said that notice of an injury must indicate that it is work-related. Texas Workers' Compensation Commission Appeal No. 992449, decided December 16, 1999. In view of the claimant's testimony and written statements of claimant's former employer, the hearing officer could conclude that the claimant did not notify her employer of a work-related injury within 30 days of the alleged date of injury. The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Disability

The hearing officer did not err in determining that the claimant did not have disability. The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have a disability.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge