

APPEAL NO. 011673
FILED SEPTEMBER 7, 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 14, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant has not had disability; and that the respondent (carrier) is relieved of liability under Section 409.002 because the claimant failed to timely report the claimed injury to his employer under Section 409.001. The claimant appealed and the carrier responded.

DECISION

The hearing officer's decision is affirmed.

CLAIMED INJURY

Section 401.011(10) defines "compensable injury." The claimant had the burden to prove that he was injured in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The claimant testified that he injured his back at work on _____, while lifting a barrel up several stairs. He also testified that several days before that incident, he had seen a doctor for back problems from a fall. A January 2001 medical report reflects that the claimant was being treated for back problems due to a motor vehicle accident. The claimant's supervisor and the safety coordinator provided testimony that contradicted the claimant's testimony on several material matters. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer's finding that the claimant did not sustain an injury in the course and scope of his employment and the decision that the claimant did not sustain a compensable injury are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Accordingly, that decision is affirmed.

DISABILITY

Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16). Consequently, the hearing officer did not err in determining that the claimant has not had disability.

NOTICE OF INJURY

Section 409.001(a) provides that, for injuries other than an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the injury occurs. The claimant testified that on the date of the injury he notified his supervisor of the injury.

The supervisor testified that the claimant did not notify him of the injury and that he first learned that the claimant was claiming a work-related injury when he was notified about a hearing on the matter sometime in 2001, after the claimant had quit his employment with the employer. The safety coordinator testified that the employer's first aid clinic did not have a record of the claimant's having been seen there on _____, or of him reporting an injury on that date, as had been testified to by the claimant. Based on other evidence in the record, the hearing officer found that the claimant notified his employer of an injury on December 21, 2000, and determined that the carrier is relieved of liability under Section 409.002 because of the claimant's failure to timely report the injury to the employer under Section 409.001. The hearing officer's finding and decision on the notice issue are sufficiently supported by the evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Accordingly, the hearing officer's decision on the notice issue is affirmed.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge