

APPEAL NO. 011693
FILED SEPTEMBER 4, 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 May 22, 2001. The hearing officer resolved the disputed issues by determining that the appellant (carrier) is not relieved of liability under Section 409.002 because the respondent (claimant) timely notified his employer of his injury pursuant to Section 409.001; that the claimant sustained a compensable injury on _____; and that the claimant had disability resulting from the claimed injury from October 22, 1998, through January 25, 1999, and from January 29, 1999, continuing to the date of the CCH. The carrier appealed and the claimant responded, urging affirmance.

DECISION

Affirmed.

Section 409.001 requires that an employee notify the employer of an injury by the 30th day after 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. Whether, and, if so, when, notice is given is a question of fact for the hearing officer to decide. There was conflicting evidence presented on the issue of notice. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the determination of the hearing officer that the claimant timely notified his employer of the injury is affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury, and as a result had disability. There was conflicting evidence on the injury and disability issues. The hearing officer resolved the conflicts and inconsistencies in the evidence in favor of the claimant and she was acting within her role as the fact finder in determining that the claimant sustained his burden of proof on both issues. Nothing in our review of the record indicates that the challenged findings are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge