

APPEAL NO. 011852  
FILED SEPTEMBER 17, 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 June 13, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury, did not have disability, did not make a timely report to the employer of an alleged work-related injury of \_\_\_\_\_, and that no good cause exists for the failure to make a timely report. The claimant has appealed these adverse determinations on sufficiency of the evidence grounds. The respondent (carrier) replied, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on \_\_\_\_\_. The claimant had the burden to prove that he sustained damage or harm to the physical structure of the body, arising out of and in the course and scope of his employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. The hearing officer specifically noted that the "claimant did not testify credibly" and the information within the documents he presented was "inconsistent or unreliable." 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)). The Appeals Panel, an appellate-reviewing tribunal, 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 and we do not find them so in this case. 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).

The hearing officer did not err in determining that the claimant did not have disability from the alleged injury. 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 was found not to have sustained a compensable injury, the hearing officer properly concluded that the claimant did not have a disability.

The hearing officer did not err in determining that the claimant failed to timely notify his employer of a work-related injury and did not have good cause for such failure to notify. 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. Conflicting evidence was presented with regard to this issue. The hearing officer's determination that the claimant failed to timely notify his employer of the alleged injury is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

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Michael B. McShane  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Robert W. Potts  
Appeals Judge