

APPEAL NO. 012072
FILED OCTOBER 15, 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 August 10, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____, that the claimant does not have disability resulting from a compensable injury on _____, that the respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to notify his employer pursuant to Section 409.001 and no good cause exists for failing to do so, and that the carrier specifically contested compensability on the issue of no injury in the course and scope of employment pursuant to Section 409.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.2(f) (Rule 124.2(f)). The claimant appealed the above determinations on sufficiency grounds and the carrier responded, urging affirmance.

DECISION

Affirmed.

There is no question that the claimant currently has an injury to his left shoulder. The claimant worked as a service technician for the employer, and provided residential plumbing services. While working alone on _____, the claimant testified that he injured his left shoulder while installing a water heater in the course and scope of his employment. The claimant further testified that he reported the injury to his employer on Monday, March 19, 2001, and that he continued to work in his normal capacity until he was terminated on April 13, 2001. The claimant first saw a doctor for his injury on April 23, 2001. The owner and the office manager of the employer testified that the claimant never reported an injury to them. They further testified that they had no knowledge that the claimant was alleging a work-related injury until they received a fax from the claimant's doctor's office on April 30, 2001. The carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) denying the claimant's claim. There is no issue as to the timeliness of the carrier's TWCC-21.

The parties agreed that the issues of injury, disability, and timely notice to the employer revolved around the credibility of the witnesses. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer heard the conflicting testimony, and determined that the claimant's testimony was not credible. He further determined that the witnesses for the carrier were credible. The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only

were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Finally, the claimant contends that the carrier's TWCC-21 only contested the timeliness of the claimant's notification to the employer, and did not adequately dispute the compensability of the claimant's injury. We do not agree. Section 43 of the carrier's TWCC-21 states in part, "There is no medical documentation to support an injury occurred on 03-17-01. There are no witnesses to support an injury occurred and claimant worked after the alleged injury without giving any notice that the alleged injury occurred." We believe that a fair reading of the language contained on the TWCC-21 submitted by the carrier was sufficient grounds for challenging whether a work-related injury occurred.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **SOUTHERN VANGUARD INSURANCE** and the name and address of its registered agent for service of process is

**BILL PITT, SOUTHERN VANGUARD INSURANCE
2727 TURTLE CREEK BLVD.
DALLAS, TEXAS 75219-4801.**

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge