APPEAL NO. 012135
FILED OCTOBER 18, 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 20, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease with a date of injury (the date, pursuant to Section 408.007, that the claimant knew or should have known that the disease may be related to his employment) of _____; that the claimant failed to timely notify the appellant (self-insured employer) pursuant to Section 409.001, but had good cause for doing so; and that the claimant had disability beginning October 5, 2000, and ending November 20, 2000. The self-insured employer has appealed these adverse determinations on sufficiency of the evidence grounds. The claimant responded, urging that the determinations of the hearing officer be affirmed.

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. The hearing officer determined that the claimant knew or should have known his injury was work-related on _____, but that he did not notify the employer of the injury within 30 days of that time. Section 408.007. The hearing officer went on, however, to find that there was good cause for the failure to timely report in that the claimant thought the injury to be trivial until he had seen a doctor and had been advised that surgery was necessary. His report to the employer was within three days after he learned that he needed surgery. 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 had good cause for his failure to timely notify 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 issue, but agreement on the period of disability if the injury was found to be compensable. 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. 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.

The true corporate name of the insurance carrier is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

CHARLES RICHARDSON
100 NORTH UNIVERSITY
FORT WORTH, TEXAS 76107.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge