

APPEAL NO. 012244  
FILED OCTOBER 31, 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 27, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that the date of injury is \_\_\_\_\_; that the respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely report his alleged injury; and that the claimant did not have disability because he did not sustain a compensable injury. In his appeal, the claimant essentially argues that each of those determinations is against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on \_\_\_\_\_. That issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence on the injury issue. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer was not persuaded that the claimant sustained his burden of proving that he sustained an injury to his low back while pulling tires at work on \_\_\_\_\_. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the challenged determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

As noted above, the claimant claimed that he sustained a compensable injury as a result of a specific incident at work on \_\_\_\_\_. He did not claim that he sustained an occupational disease injury. As such, an occupational disease date of injury issue under Section 408.007 was not properly before the hearing officer. Thus, we strike Finding of Fact No. 5 and Conclusion of Law No. 4 as unnecessary to the decision. The undisputed date of the claimed specific incident injury was \_\_\_\_\_. The carrier acknowledged, and the hearing officer found, that the claimant reported a work-related injury to a supervisor on \_\_\_\_\_. Accordingly, we reverse the determination that the carrier is relieved from liability pursuant to Section 409.002 because of the claimant's failure to timely report his alleged injury and render a new decision that the claimant timely reported his alleged injury of \_\_\_\_\_; thus, the carrier would not be relieved from liability had that injury been determined to be compensable.

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the disability determination. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's injury and disability determinations are affirmed. His determination that the date of injury is \_\_\_\_\_, is stricken and the determination that the carrier is relieved of liability based upon the claimant's failure to timely report his alleged injury is reversed and a new decision rendered that the claimant timely reported his alleged \_\_\_\_\_, injury.

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

**CT CORPORATION SYSTEM  
350 N. ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Philip F. O'Neill  
Appeals Judge