

APPEAL NO. 012321  
FILED NOVEMBER 13, 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 September 5, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) sustained a bilateral carpal tunnel syndrome (CTS) occupational disease injury in the course and scope of his employment; that the date of the occupational disease injury is \_\_\_\_\_; that the claimant did not timely report his injury to his employer; that the respondent (carrier) is relieved of liability due to the claimant's failure to timely report his injury; that the claimant did not sustain a compensable occupational disease injury; and that the claimant did not have disability because he did not sustain a compensable injury. In his appeal, the claimant appeals the hearing officer's determinations that he did not timely report his injury to his employer and that his failure to do so is not excused by good cause or other legal excuse. In its response to the claimant's appeal, the carrier urges affirmance. Neither party appealed the hearing officer's determinations that the claimant's work activities were a producing cause of his bilateral CTS, that the date of the claimant's occupational disease injury is \_\_\_\_\_, and that he was unable to obtain and retain employment at wages equivalent to his preinjury wage as a result of his bilateral CTS from May 23, 2000, through November 6, 2000; and those determinations have, therefore, become final pursuant to Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not timely report his injury to his employer. The question of when the claimant reported his injury to his employer 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 notice 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). Sufficient evidence supports the hearing officer's determination that the claimant did not report his injury to his employer until May 23, 2000, which was more than 30 days after the \_\_\_\_\_, date of injury. There was some conflict in the claimant's testimony; however, he stated, at one point, that he reported his injury to his employer on \_\_\_\_\_. The hearing officer did not find that testimony persuasive, and he was acting within his province as the fact finder in deciding to reject that testimony. Nothing in our review of the record reveals that the hearing officer's notice determination 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). At

the hearing and on appeal, the claimant argued that he timely reported his injury. He did not advance a good cause argument or argue that the employer had actual knowledge of the injury. Thus, the hearing officer properly determined that the claimant's failure to give timely notice was not excused.

Given our affirmance of the hearing officer's determination that the carrier is relieved of liability under Section 409.002 based upon the claimant's failure to give timely notice in accordance with Section 409.001, we likewise affirm the determinations that the claimant did not sustain a compensable injury and that he did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **HIGHMARK CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750  
AUSTIN, TEXAS 78701.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge