

APPEAL NO. 012407
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 18, 2001. The hearing officer resolved the disputed issues by determining that (1) the appellant (claimant) sustained an injury on _____, while in the course and scope of her employment, (2) that she did not report her injury to her employer within 30 days and had no good cause for failing to do so, (3) that because of her injury the claimant was unable to obtain or retain employment at wages equivalent to her preinjury wages beginning on May 14, 2001, and continuing through July 1, 2001, (4) that because the claimant failed to timely report her injury to her employer pursuant to Section 409.001, the respondent (carrier) is relieved from liability pursuant to Section 409.002, (5) that the claimant's injury is not compensable, and (6) that because there is no compensable injury there is no disability. The claimant has appealed on sufficiency of the evidence grounds and the carrier has responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that she sustained an injury to her right knee in the course and scope of her employment on _____, and that due to this injury she was unable to obtain or retain employment at wages equivalent to her preinjury wages beginning on May 14, 2001, and continuing through July 1, 2001. These determinations are unchallenged by either party on appeal.

The claimant does dispute the hearing officer's determination that she did not sustain a compensable injury, and therefore did not have disability, because she failed to timely notify her employer pursuant to Section 409.001, thereby relieving the carrier of liability pursuant to Section 409.002. Conflicting evidence was presented on the issue of notice. The claimant testified that she reported her injury on the day of the accident to DM, owner and general manager; to LA, who was a "crew leader"; and to AM, whom the claimant described as being her "crew leader." The carrier submitted evidence which indicated that, of all the people the claimant asserts she reported her injury to, the only one that recalls the claimant mentioning a work-related injury was AM, and that the employer did not get notice that the claimant was alleging a work-related injury until late April or early May of 2001, when DM received a call from the claimant's doctor requesting insurance information. DM testified that AM is his son, and although DM counted on AM to "make sure things got done," at the time of the claimant's injury AM was not a "crew leader" or supervisor of any kind.

Section 409.001(a) provides that an employee who sustains a specific injury must notify the employer of the injury not later than the 30th after the date on which the injury occurs. Section 409.001(b) provides that the required notice must be given to the employer

or an employee of the employer who holds a supervisory or management position. Section 409.002 provides that failure to notify the employer as required in Section 409.001(a) relieves the employer and the employer's insurance carrier from liability under this subtitle unless there is good cause for the failure to timely report the injury. We note that the claimant is asserting that she timely reported her injury and thus that "good cause" for untimely notice is not an issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). There was conflicting evidence as to whether the claimant reported her injury to DM, LA, or AM. The hearing officer resolved the conflicts and inconsistencies in the evidence against the claimant and was acting within her role as fact finder in determining that the claimant did not timely report her injury to any supervisor or manager.

The hearing officer determined that the claimant did timely report a work-related injury to AM, but that he was not a supervisor or an employee. The fact that the employer does not consider an employee to be a "supervisor" is not dispositive. The Appeals Panel has stated that in order for a person to be considered as holding a supervisory position for purposes of receiving notice of an injury, it is not necessary to have hiring, firing, and disciplinary authority; and that task-assigning authority may be sufficient to confer the status of a supervisor. Texas Workers' Compensation Commission Appeal No. 010020, decided February 12, 2001, citing Texas Workers' Compensation Commission Appeal No. 961551, decided September 19, 1996. The claimant had the burden to establish that AM held a supervisory or managerial position. Upon review of the record before us, we do not believe the hearing officer erred in determining that the claimant failed to meet this burden. Nothing in our review of the record indicates that the challenged determinations of the hearing officer are so against the great weight and preponderance 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6th STREET
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge