

APPEAL NO. 012436
FILED NOVEMBER 30, 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 26, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant has not had disability; and that the respondent (carrier) is relieved of liability under Section 409.002 because the claimant failed to timely notify his employer of his claimed injury under 409.001.

DECISION

The hearing officer's decision is affirmed.

COMPENSABLE INJURY ISSUE

The hearing officer did not err in determining that the claimant did not sustain a compensable injury. Section 401.011(10) defines the term "compensable injury." The claimant had the burden to prove that he was injured in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The claimant testified that he was performing his job duties pushing a car when he injured his back. Conflicting evidence was presented on this issue. A medical report dated about one month after the date of the claimed injury noted that the claimant had had low back pain for about six months and that he could not recall having had any traumatic injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

DISABILITY ISSUE

The hearing officer did not err in determining that the claimant has not had disability because, without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

TIMELY NOTICE ISSUE

The hearing officer did not err in determining that the claimant did not give timely notice of the claimed injury to the employer. Notice of an injury must be given to the employer not later than 30 days after the date of the injury. Section 409.001(a). Notice of the injury may be given to the employer or to an employee of the employer who holds a supervisory or management position. Section 409.001(b). The claimant had the burden

to prove that he timely reported his injury to his employer. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). The claimant testified that he informed several of his supervisors of his injury within 30 days of the date of the claimed injury. The claimant's supervisors testified that notice was not given within the required 30-day period. The hearing officer resolved the conflicts in the evidence and determined that the claimant failed to timely notify his employer of the claimed injury. The hearing officer also determined that the claimant did not have good cause for failing to timely notify his employer of the claimed injury by finding that a person of ordinary prudence in the claimant's circumstances would have reported the alleged injury not later than the 30th day after the claimed date of injury. The hearing officer's determination on the notice issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

The hearing officer's decision and order are affirmed.

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

**RON JOHNSON
101 EAST PARK BLVD., SUITE 200
PLANO, TEXAS 75074.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge