

APPEAL NO. 012586
FILED DECEMBER 12, 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 (CCH) was held on September 27, 2001. The hearing officer determined that (1) the appellant (claimant) sustained a compensable injury in the form of an occupational disease; (2) the claimant's date of injury was _____; (3) the claimant failed to timely report an injury to his employer without good cause for failing to do so, thereby relieving the carrier from liability for this claim; and (4) although the claimant was unable to obtain and retain employment at his preinjury wages from December 5, 2000, through the date of the hearing, there can be no disability since the claimant failed to timely report his injury. The claimant appeals the notice and disability determinations on sufficiency grounds. The respondent (carrier) urges affirmance. The hearing officer's injury and date of injury determinations were not appealed and are, therefore, final. Section 410.169.

DECISION

Affirmed.

Notice of Injury

Section 409.001(a)(2) provides, in relevant part, that an employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the carrier of liability, unless the employer or carrier has actual knowledge of the injury, good cause exists, or the claim is not contested. Section 409.002.

The hearing officer determined that the claimant knew or should have known that the injury may be related to his employment on _____. The claimant did not appeal this determination. The claimant testified that he first informed his employer of his work-related injury on or about _____. Although the claimant asserts that his employer had actual knowledge of a work-related injury on or about _____, because the claimant was wearing a respirator, the evidence shows that wearing a respirator was a requirement of claimant's job. Accordingly, the hearing officer could find that merely wearing a respirator at work did not give the employer actual knowledge of a work-related injury. The hearing officer's determination that the carrier is relieved from liability pursuant to Section 409.002 is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Additionally, we cannot conclude that the hearing officer abused her discretion in determining that the claimant did not have good cause for failing to timely notify his employer of the claimed injury.

Disability

The hearing officer did not err in determining that the claimant did not have disability. The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant's injury was not a compensable injury, the hearing officer properly concluded that the claimant did not have disability.

The decision and order of the hearing officer 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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge