APPEAL NO. 013100
FILED FEBRUARY 6, 2002

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 November 26, 2001. The hearing officer resolved the disputed issues by concluding that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant did not have disability; and that he failed to file his claim within one year of the injury and did not have good cause for late filing. The claimant appeals, arguing that the hearing officer's determinations were so against the great weight of the evidence as to be clearly wrong and unjust and that the respondent (self-insured) did not timely assert the defense of failing to timely file an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41). In its response, the self-insured urges affirmance.

DECISION

Affirmed.

The claimant testified that he was employed as a bus driver for the employer and that he was injured on _____, when a sign from the bus fell and struck him on the head. He testified that he sought medical treatment and although he was referred to a neurologist, he did not follow up because the employer had denied the claim and he was receiving medical bills. The claimant testified that he continued to work for the employer, but his symptoms did not resolve and he went to the emergency room in February 2001. The records reflect that the claimant had surgery on February 23, 2001, because of the discovery of a subdural hematoma.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence has established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Ins. Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse a factual determination of a hearing officer only if that determination is 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, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find no basis to disturb the hearing officer's determination that the claimant did not sustain a compensable injury.

Because we affirm the hearing officer's injury determination, we also affirm his disability determination. By definition, if the claimant did not sustain a compensable injury,

he cannot have disability. Section 401.011(16).

The evidence sufficiently supports the hearing officer's determination that the claimant did not timely file a claim with the Texas Workers' Compensation Commission (Commission). Section 409.003 provides that an employee or a person acting on the employee's behalf shall file with the Commission a claim for compensation for an injury not later than one year after the date on which the injury occurred. The record reflects that the claimant filed a TWCC-41 on September 20, 2001, the same day the benefit review conference was held. The hearing officer determined that the claimant did not timely file a claim within one year from _____, and that the claimant "did not have good cause for late filing." Our review of the record does not reveal that those determinations are so against the great weight of the evidence as to compel their reversal on appeal.

The failure of the claimant to file a claim within one year does not automatically relieve the carrier of liability, because the defense under Section 409.004 must itself be raised within a reasonable period of time. Section 409.022(b); Texas Workers' Compensation Commission Appeal No. 982888, decided January 26, 1999; Texas Workers' Compensation Commission Appeal No. 950613, decided June 8, 1995*; see also* Texas Workers' Compensation Commission Appeal No. 94224, decided April 1, 1994; Texas Workers' Compensation Commission Appeal No. 941480, decided December 12, 1994. However, the record reflects that the timeliness of raising the one-year limitation as a defense was not an issue before the hearing officer. Although it was addressed in the claimant's closing argument, the record does not reflect that the issue was added by the agreement of the parties or actually litigated at the hearing. Thus, the hearing officer did not err in not resolving that issue.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY** and the name and address of its registered agent for service of process is

SHIRLEY A. DeLIBRO
1201 LOUISIANA STREET, 16TH FLOOR
HOUSTON, TEXAS 77002.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge