APPEAL NO. 020139
FILED FEBRUARY 27, 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 December 18, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant did not have disability; and that the respondent (carrier) is relieved from liability under Section 409.002 because the claimant failed to timely notify the employer of his injury under Section 409.001. The claimant has appealed, arguing that the hearing officer's determinations regarding compensability, disability, and untimely notification of injury to the employer are clearly wrong, manifestly unjust, and against the great weight of the evidence. The carrier filed a response, urging affirmance.

DECISION

Affirmed.

The claimant testified that he had a prior work-related back injury in _____, that resolved by the time he returned to work in July 1998; that on _____, as he was stretching nylon webbing to re-cover an airplane seat he injured his low back; and that he reported his injury to his supervisor on June 8, 1999, but the supervisor did not document the injury. The claimant also testified that he stopped working on June 15, 1999, because his back was hurting, and sought medical treatment from Dr. J for his low back, and that he was unable to work from August 20, 1999, to July 1, 2001, when he voluntarily retired. An MRI dated March 29, 2000, reflects that the claimant had bulging discs at the L4-5 and L5-S1 levels. A Post Lumbar Discogram dated October 17, 2000, reflects a herniated disc at L4-5 and L5-S1. The claimant had spinal surgery on January 24, 2001.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. An employee has the burden of proving, by a preponderance of the evidence, that he or she sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The hearing officer was not persuaded by the claimant's testimony or the medical reports in evidence that the claimant sustained a compensable injury on _____. The hearing officer commented that the "preponderance of the credible evidence does not support a finding that the claimant sustained an injury to his lower back on _____," and that the "medical records reflect that the claimant initially was treated after _____ for complaints of lower back pain due to a _____ lower back injury and/or a _____ lower back injury." It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true of medical evidence. Texas Employers

Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

Since we are affirming the hearing officer's decision that the claimant did not have a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

Similarly, the hearing officer did not err in determining that the claimant did not timely report to the employer that he sustained a work-related injury and that the claimant did not have good cause for his failure to report an injury to the employer within 30 days of _____. The hearing officer commented that the preponderance of the credible evidence does not support a finding that the claimant reported the injury "any earlier than August 20, 1999 as reflected in his prior recorded statement" to the carrier's adjuster.

Nothing in our review of the record indicates that the challenged determinations are so against the great weight 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 decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**TIM KELLY**
**AIG**
**675 BERING, 3RD FLOOR**
**HOUSTON, TEXAS 77057**.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge