

APPEAL NO. 020325
FILED MARCH 15, 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 (CCH) was held on January 15, 2002. Two cases involving the appellant/cross-respondent (claimant) were combined into one CCH and heard at the same time. As to (docket 1), the hearing officer determined that the compensable injury of _____, includes a sprain/strain and effusion of the right knee but does not include an injury to the left knee consisting of an ACL tear with loose bodies. The hearing officer further determined that the right knee injury did not result in disability. As to (docket 2), the hearing officer determined that the claimant sustained a work-related injury to his left knee in the form of an ACL tear; that due to the left knee ACL tear, the claimant was unable to obtain or retain employment at wages equivalent to his preinjury wages beginning on September 19, 2000, and continuing through the date of the hearing; that the claimant failed to timely notify his employer of the _____, work-related injury and no good cause for failure to do so was shown; that because the claimant did not timely notify his employer of the _____, work-related left knee ACL tear, the injury is not compensable and the claimant did not have disability; and that the respondent/cross-appellant (carrier 2) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001 and no good cause was shown.

The claimant appealed the hearing officer's determination that he did not sustain a compensable injury and did not have disability because of his failure to timely notify the employer and no good cause was shown on sufficiency grounds. The respondent (carrier 1) and carrier 2 responded, urging affirmance. Carrier 2 appealed the hearing officer's determination that the claimant sustained a work-related injury in the form of a left knee ACL tear on _____, and that he has been unable to obtain or retain employment at wages equivalent to his preinjury wages due to the work-related left knee injury on sufficiency grounds. The claimant responded, urging affirmance. The hearing officer's determination that the compensable injury of _____, includes a sprain/strain and effusion of the right knee but does not include an injury to the left knee consisting of an ACL tear with loose bodies, and that the right knee injury did not cause disability are unappealed and have become final. Section 410.169.

DECISION

We affirm.

On appeal, the claimant asserts that the hearing officer erred in her determination that he did not timely notify the employer and that no good cause was shown. The claimant contends that he did timely notify the employer of his injury or, in the alternate, that he did have good cause for not timely notifying the employer because he was unaware that he had sustained a new injury. Section 409.001 requires that an employee notify the employer of an injury by the 30th day after the injury occurs. Failure to do so, absent a

showing of good cause or actual knowledge of the injury by the employer, relieves the carrier and employer of liability for the payment of benefits for the injury. Section 409.002. Whether, and, if so, when, notice is given is a question of fact for the hearing officer to decide. The evidence presented on the issue of notice was conflicting and subject to different interpretations. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer, as the trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Although another fact finder could have reached a different conclusion on the same evidence, that alone is not a basis on which to disturb the hearing officer's decision. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Applying this same standard of review to carrier 2's appeal, we cannot say that the hearing officer's determination that the claimant sustained a work-related injury to his left knee on _____, and that because of that injury he has been unable to obtain or retain employment at wages equivalent to his pre-injury wages is against the great weight and preponderance of the evidence. Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of insurance carrier 1 is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701**

The true corporate name of insurance carrier 2 is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE I
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge