APPEAL NO. 020667
FILED MAY 2, 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 February 12, 2002. The hearing officer resolved the disputed issues before him by determining that the appellant (claimant) did not sustain a compensable injury on or about _____; that the claimant failed to timely notify the respondent (employer) of the claimed injury pursuant to Section 409.001; and that the employer exercised reasonable diligence in pursuing the contest of compensability and did not waive the right to dispute the injury. The claimant appealed on sufficiency grounds. There is no response from the employer in the file.

DECISION

Affirmed.

Conflicting evidence was presented regarding the issues in this case. The claimant testified that he injured his knee while climbing some stairs late in the afternoon of _____, and that he telephoned his immediate supervisor and informed him of the work-related injury that same day. The claimant further testified that he called in and spoke to his manager on _____; that he informed her that he would not be in because of his work-related injury; and that he received a one-day suspension for calling in sick pursuant to company policy. The claimant testified that he called his manager on _____, the day of his suspension, and asked to see a doctor for his knee. The claimant stated that his manager told him the employer did not have any insurance and quickly changed the subject. The claimant testified that he spoke to the employer's "consultant" about a month later because he was angry about being suspended for a day due to a reported work-related injury; that the consultant was surprised nobody had notified him, the consultant, of the injury; that he, the claimant, was compensated for the day he missed due to the suspension; and that he had heard that the consultant "chewed out" the manager. The claimant continued to work his regular duty until he was terminated for cause in December of 2000. The claimant first sought medical treatment for the claimed injury in _____, after seeing his lawyer. The records indicate that the carrier received its first written notice of the claim on _____, and the employer filled out an Employer's Contest of Compensability (TWCC-4) on January 26, 2001.

The employer presented testimony from the claimant's direct supervisor, the manager, and the consultant. All three of the witnesses denied that the claimant ever reported a work-related injury to them. The claimant's direct supervisor stated that the claimant told him his knee was bothering him at the start of the shift on Monday, _____, but nothing more was said and the claimant never mentioned it was work related. The consultant testified that he immediately contested the claim upon receiving notice of it from the carrier. He further stated that he took no further action until he received a copy of a medical bill in August of 2001.

The hearing officer did not err in determining that the claimant did not sustain a

compensable injury on _____, and that he did not timely notify his employer of a work-related injury pursuant to Section 409.001. Both of these issues involved a factual question for the hearing officer to resolve. 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 that he sustained a compensable injury on _____, and that he reported a work-related injury to the employer in a timely manner. The hearing officer commented that the "claimant's version of events and the testimony of the employer's witnesses were irreconcilable," and that the "[c]laimant's version of events was not credible." 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.). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). An appellate reviewing body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995.

Similarly, the hearing officer did not err in determining that the employer exercised reasonable diligence in pursuing the contest of compensability and did not waive the right to dispute the injury. Whether or not an employer has exercised reasonable diligence in pursuing its right to contest compensability after the carrier has accepted liability pursuant to Section 409.011 is a question of fact for the hearing officer to resolve. *See* Texas Workers' Compensation Commission Appeal No. 92280, decided August 13, 1992. The hearing officer found as fact that the employer acted in a reasonably prudent manner in disputing the compensability of the claim. He further commented that the employer took immediate steps to contest the compensability of the claimed injury after receiving its first written notice of the claim by completing a TWCC-4, faxing it to the carrier, and mailing it to the Texas Workers' Compensation Commission.

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 **CAMDEN FIRE INSURANCE ASSOCIATES** and the name and address of its registered agent for service of process is

C. J. FIELDS
5910 NORTH CENTRAL EXPRESSWAY, SUITE 500
DALLAS, TEXAS 75206.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge