APPEAL NO. 020960
FILED JUNE 5, 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 March 5, 2002. 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 timely report an injury to the employer; that no good cause exists for the claimant's failure to timely notify the employer of the occurrence of a work-related injury; that the claimant has not had disability; and that the claimant is not barred from pursuing Texas worker's compensation benefits because of an election of remedies. The determination of election of remedies was not appealed. Accordingly, this determination has become final pursuant to Section 410.169.

The claimant appeals the determinations as to compensability, timely notification, good cause, and disability essentially on sufficiency grounds. The claimant additionally states in her appeal that the "original" ombudsman was removed from her case the day before the CCH, and that the new ombudsman did not have the same knowledge, and that this might have caused the ombudsman to have less of an input at the hearing. The appeals file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

We first address the claimant's complaint concerning the change of ombudsman. A review of the record does not reveal that the claimant made any request for a continuance in order to have the services of the first ombudsman or that she received inadequate ombudsman assistance at the CCH. As a general rule, the Appeals Panel does not consider matters raised for the first time on appeal. We see no reason to reverse the decision of the hearing officer and remand for another CCH with the assistance of the ombudsman that first assisted the claimant.

"Compensable injury" is defined in Section 401.011(10). The carrier stated at the CCH that it was willing to stipulate that the claimant suffered a repetitive injury as a result of her work with the employer with a date of injury of _____. This stipulation, however, did not resolve the entire question of whether there was a compensable injury, because, as defined by statute, a compensable injury is both an injury that arises out of the course and scope of employment and also an injury for which compensation is payable under the 1989 Act.

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 the 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 determine. Conflicting evidence was presented on this issue. The hearing officer determined that the claimant did not provide timely notice of any injury to the employer, and that finding is supported by the evidence. The claimant offered no evidence regarding the issue of good cause for failure to timely notify her employer of the work-related injury, as it was her position, both at the CCH and on appeal, that she reported her injury within 30 days of the occurrence of the injury. The hearing officer concluded otherwise. Because the claimant failed to timely notify her employer of the injury, compensation for the injury is not payable. Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and 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). Nothing in our review of the record indicates that the hearing officer's 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 the determinations on appeal. Pool, Cain.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

GARY SUDOL
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge