

APPEAL NO. 021139
FILED JUNE 25, 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 April 8, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) sustained an injury in the course and scope of his employment on _____; that the respondent (carrier) is relieved of liability under Section 409.002 because the claimant failed to report the injury to his employer not later than the 30th day after the day the injury occurred as required by Section 409.001(a) and did not have continuing good cause for failing to report the injury until he reported it on October 25, 2001; and that the claimant has not had disability because he did not sustain a compensable injury due to his failure to timely report the injury and his failure to have continuing good cause for not reporting the injury until he reported it. The claimant appealed the hearing officer's determinations on the notice and disability issues. No response was received from the carrier.

DECISION

The hearing officer's decision is affirmed.

The claimant had the burden to prove that he timely reported his injury to his employer. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). A claimant who fails to give timely notice of injury to his employer has the burden to show good cause for such failure. Aetna Casualty & Surety Company v. Brown, 463 S.W.2d 473 (Tex. Civ. App.-Fort Worth 1971, writ ref'd n.r.e.). Conflicting evidence was presented at the CCH on the notice issue. The claimant admitted that he did not report the injury to the employer within 30 days of the date of injury. He claimed he had good cause for failing to report the injury. The claimant claims that the good cause existed up to October 8, 2001, and that that is when he reported the injury to his employer. The hearing officer weighed the conflicting evidence and determined that the claimant did not report the injury to his employer until October 25, 2001. While the hearing officer's findings of fact on the termination of good cause are somewhat confusing because his findings indicate that the claimant's good cause for failing to report the injury ended on either August 13 or on October 8, 2001, he concluded that the claimant's good cause ended on August 13, 2001. Whether the existence of good cause ended on August 13 or on October 8, 2001, the hearing officer's determinations that the claimant did not have continuing good cause for failing to report his injury until October 25, 2001, and that October 25, 2001, is the date he reported his injury to his employer are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Consequently, the hearing officer did not err in determining that the carrier is relieved of liability under Section 409.002. The hearing officer also did not err in determining that the claimant has not had disability because

without a compensable injury as defined by Section 401.011(10), the claimant would not have disability as defined by Section 401.011(16).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **SENTRY INSURANCE** and the name and address of its registered agent for service of process is

**GAIL L. ESTES
1525 NORTH INTERSTATE 35E, SUITE 220
CARROLLTON, TEXAS 75006.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge