

APPEAL NO. 021637
FILED AUGUST 14, 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 May 31, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on or about _____; that the claimant notified her employer of an injury within 30 days thereafter; that the claimant is not barred from pursuing workers' compensation benefits because of any election to receive benefits under her husband's personal health insurance policy; and that because the claimant did not sustain a compensable injury, she could not have disability. The claimant appealed the hearing officer's determination that she did not sustain a compensable injury and did not have disability. The file does not contain a response from the respondent (carrier). The hearing officer's determinations as to timely notice and election of remedies are unappealed and have become final. Section 410.169.

DECISION

Affirmed.

The claimant had the burden to prove that she was injured in the course and scope of her employment. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). 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). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate 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 Worker's Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's injury determination is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb the determination that the claimant did not sustain a compensable injury on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

In her appeal, the claimant asserts that the carrier initially denied the claim solely because the claimant failed to report the injury to her employer within 30 days. We disagree. In evidence was the carrier's Payment of Compensation or Notice or Refused/Disputed Claim (TWCC-21), which was dated one day after the carrier indicates it received notice of the claimed injury. The carrier clearly indicates on the TWCC-21 that it is disputing compensability and disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL GUARDIAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Daniel R. Barry
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge