

APPEAL NO. 022164
FILED OCTOBER 8, 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 July 23, 2002. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease injury and that the claimant did not timely report his alleged injury to his employer in accordance with Section 409.001. In his appeal, the claimant essentially argues that the hearing officer's determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The claimant had the burden to prove that he sustained a compensable injury and that he timely reported his injury to his employer or had good cause for his failure to do so. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Those issues presented questions of fact for the hearing officer to resolve. 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 the 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. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, the hearing officer was not persuaded that the claimant's repetitive overhead activities as an assistant volleyball coach caused his bilateral shoulder injuries. In addition, the hearing officer was not persuaded that the claimant reported his injury within 30 days of _____, the date of injury he claimed, or that he had good cause, based upon trivialization, that continued until June 28, 2001, the date he reported his alleged injury to his employer. The hearing officer was acting within her province as the fact finder in so resolving the issues before her. Our review of the record does not demonstrate that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse those determinations on appeal. Pool; Cain.

The hearing officer's decision and order are affirmed.

The true corporate name of the self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**WS
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Veronica Lopez
Appeals Judge