

APPEAL NO. 022410  
FILED NOVEMBER 6, 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 August 22, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; that the claimant has had disability from December 27, 2001, through the date of the CCH; and that the appellant (carrier) is not relieved of liability under Section 409.002 because the claimant had good cause for failing to notify his employer of his injury until he gave notice on January 2, 2002. The carrier appealed and the claimant responded.

DECISION

The hearing officer's decision is affirmed.

Since we agree with the carrier's assertion that the parties did not stipulate that the benefit review conference reports were switched, we strike Stipulation 1.D. However, since the parties agreed at the CCH on what the disputed issues are that pertain to the claimant's claim of an injury arising from a specific accident in the course and scope of his employment on \_\_\_\_\_, and since the hearing officer addressed the agreed-upon disputed issues relating to that claim, we perceive no reversible error with regard to the complained-of stipulation. We also agree with the carrier's assertion that the hearing officer erred in stating in the Statement of the Evidence portion of the decision that after the incident of \_\_\_\_\_, the claimant saw his doctor in June and was told by the doctor that his diabetes was acting up. According to the claimant's testimony and the medical records, the claimant saw his doctor in September 2001. However, we again do not find reversible error in this misstatement of the evidence because, with regard to the finding of good cause, there is evidence that the claimant had been attributing his pain to a 1990 or 1991 tailbone fracture prior to being told by his doctor that the cause of his pain was diabetes or arthritis. With regard to the carrier's assertion that no injury was proved, although the radiologist reported that the claimant's lumbar MRI did not show a disc herniation, the orthopedic surgeon determined to the contrary.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10), that he had disability as defined by Section 401.011(16), and that he timely reported his injury to his employer within 30 days of the injury, or had good cause for failing to timely report the injury. Conflicting evidence was presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations on the disputed issues 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).

The hearing officer's decision and order are affirmed.

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

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Margaret L. Turner  
Appeals Judge