

APPEAL NO. 022471
FILED NOVEMBER 18, 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 August 26, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant did not have disability because there was no compensable injury; and that the respondent (carrier) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001. The claimant appealed on sufficiency of the evidence grounds and the file does not contain a response from the carrier.

DECISION

Affirmed.

We note that at the commencement of the hearing on this matter, the hearing officer announced that the issue of "Did the carrier fail to timely dispute the claim, pursuant to Section 409.021 of the Texas Labor Code?" was added pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7 (Rule 142.7) without objection by either party. The hearing officer made no findings of fact or conclusions of law on this issue, nor was the issue appealed by either party. While this was error, we will not remand because the record is clear that the carrier did timely dispute the claim within three days of receiving written notice of injury.

Injury, disability, and timely notice to the employer are questions of fact for the hearing officer to decide. Conflicting evidence was presented on the disputed issues. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. When reviewing a hearing officer's decision for factual sufficiency of the evidence we will reverse the decision only if it is so contrary to 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); Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986). Nothing in our review of the record reveals that the challenged 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 reverse those determinations on appeal.

The hearing officer's decision and order are affirmed.

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

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica Lopez
Appeals Judge