APPEAL NO. 030426
FILED APRIL 1, 2003

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 April 30, 2002, and on November 26, 2002. The record closed on December 9, 2002. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the respondent (carrier) would be relieved of liability if the claimant had sustained a compensable injury because of the claimant's failure to timely report his alleged injury to his employer; and that the claimant did not have disability because he did not sustain a compensable injury. In his appeal, the claimant essentially argues that the hearing officer's injury, notice, and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____, and that he did not timely report his alleged injury to his employer. The claimant had the burden of proof on those issues. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The injury and notice 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, there was conflicting evidence on the issues of whether the claimant was shocked at work, causing him to fall from a scaffold and land on the ground, and whether and when he reported his alleged injury to his employer. The hearing officer noted that there was a "lack of probative evidence to support that any work-related accident ever occurred." The hearing officer similarly noted that the claimant's evidence that he reported a work-related injury to his employer was lacking. The hearing officer simply was not persuaded that the claimant sustained his burden of proving that he sustained a compensable injury or that he timely reported an injury. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record demonstrates 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 the injury and notice determinations on appeal. Pool, *supra*; Cain, *supra*.

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that he did not have disability.

The hearing officer's decision and order are affirmed.

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

GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Terri Kay Oliver
Appeals Judge

_____
Robert W. Potts
Appeals Judge