

APPEAL NO. 031351  
FILED JULY 16, 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 (CCH) was held on April 29, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and that he had disability from April 14 through September 30, 2002. The hearing officer additionally found that the claimant had good cause for not appearing at the hearing scheduled on February 4, 2003. The appellant (carrier) appealed, arguing that the compensable injury and disability findings are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. The carrier additionally appeals the good cause finding. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant had good cause for failure to appear at the CCH on February 4, 2003. We review good cause determinations under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 002251, decided November 8, 2000. The hearing officer's determination will not be set aside unless the hearing officer acted without reference to any guiding rules or principles. See Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We have held that the appropriate test for the existence of good cause is that of ordinary prudence; that is, the degree of diligence an ordinarily prudent person would have exercised under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994. The claimant testified that he was separated from his wife and moved in with various siblings for brief periods of time and was not informed of the scheduled hearing. The evidence reflects that a CCH in this case had been rescheduled at both the request of the claimant and the carrier prior to the February 4, 2003, setting. In view of the circumstances, we cannot conclude that the hearing officer abused her discretion in determining that good cause existed for the claimant's failure to appear at the CCH on February 4, 2003.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues. 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. Although there is conflicting evidence, we conclude that the hearing officer's decision is supported by the claimant's testimony and by the medical evidence. The hearing officer's decision is supported by sufficient evidence and is 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).

We affirm the decision and order of the hearing officer.

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

**CORPORATE SERVICES COMPANY  
800 BRAZOS STREET  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge