

APPEAL NO. 031411
FILED JULY 17, 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, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, that the claimant had disability from September 2, 2002, through April 30, 2003, and that the claimant gave timely notice to his employer pursuant to Section 409.001.

The appellant (carrier) appeals the disputed issues, contending that the claimant's amputation was necessitated by the claimant's uncontrolled diabetes, that the claimant did not timely report the injury as alleged, and that because there is no compensable injury, the claimant cannot have disability. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant, a construction worker, testified that while working on an apartment renovation site he stepped on a nail, which went through the sole of his "tennis shoe" and punctured the skin of his right foot on _____. It was undisputed that the claimant was a diabetic. The claimant testified that he told his supervisor about the incident at the time but continued to work the rest of his shift. He further testified that evening at home he took off his shoe, saw the broken skin and self medicated the puncture wound. The claimant continued to work for a time, was eventually admitted to a hospital on September 2, 2002, with a diagnosis of cellulitis and "DKA" (diabetic keto-acidosis), and had a partial amputation of his right foot. He was discharged from the hospital but was eventually readmitted and underwent an amputation of the right leg above the knee on October 15, 2002.

This case is strictly one of credibility and what evidence the finder of fact chooses to believe. The carrier points to evidence that the amputations were due to the uncontrolled diabetes and that the claimant had not timely reported the injury to the employer. The hearing officer found that the claimant had sustained the injury as he testified and that he had reported the injury to his on-site supervisor/foreman on _____.

The questions of whether the claimant sustained a compensable injury, whether he timely reported his injury, and whether he had disability, presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers

Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of the claimant. 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 disturb those determinations on appeal.

The decision and order of the hearing officer is 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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge