

APPEAL NO. 031478
FILED JULY 15, 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 May 21, 2003. The hearing officer determined that the appellant/cross-respondent (claimant) did not sustain a compensable injury to his left shoulder, left elbow, left wrist, and low back; that the date of injury (DOI) is _____; that the claimant did not have disability; and that the respondent/cross-appellant (carrier) is not relieved of liability under Section 409.002 because the claimant timely notified his employer pursuant to Section 409.001. The claimant appeals the determinations of compensability and disability on evidentiary sufficiency grounds. The carrier responds, urging that the compensability and disability determinations be affirmed. The carrier also cross-appeals the DOI determination as not supported by the evidence, and asserts that the timely notification determination is therefore incorrect. The claimant did not file a response to the carrier's cross-appeal.

DECISION

Affirmed.

There was conflicting evidence presented on the question of when the claimed injury occurred. It was apparently not clear at the time that the claimant first reported the injury whether he was reporting an incident that had recently occurred, or one from some time earlier, and a date in November was written down. By the time of the benefit review conference and this hearing, the claimant was clearly asserting that the DOI was _____. The carrier offered evidence that would tend to support that the incident occurred prior to September 11, 2002. This was a factual issue for the hearing officer to resolve. 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. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and determine what facts have been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse a factual determination of a hearing officer only if that determination is 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, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We do not find it to be so in this case, and we affirm the determination that the DOI was _____.

The determination that the claimant timely notified the employer is dependent on the DOI. Since the hearing officer's determination of DOI is sufficiently supported by the evidence, we likewise affirm his determination of timely notification of the employer.

Whether a compensable injury occurred and the extent of that injury are fact questions for the hearing officer. We have reviewed the matters complained of on appeal and conclude that the hearing officer's decision is supported by sufficient evidence. Cain, *supra*.

Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his decision that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge