

APPEAL NO. 031509
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 was held on May 19, 2003. With respect to the issues before him, the hearing officer determined that the appellant/cross-respondent (claimant) sustained an injury in the course and scope of his employment on _____; that the respondent/cross-appellant (carrier) is relieved of liability under Section 409.002 because the claimant did not timely report his injury to his employer in accordance with Section 409.001; and that the claimant did not have disability because he did not sustain a compensable injury. In his appeal, the claimant asserts error in the hearing officer's determination that the carrier is relieved of liability pursuant to Section 409.002. In its response to the claimant's appeal, the carrier urges affirmance of the hearing officer's notice determination. In its cross-appeal, the carrier argues that the hearing officer's determinations that the claimant sustained an injury in the course and scope of his employment on _____, and that, as a result of his work-related injury, he was unable to obtain and retain employment at wages equivalent to his preinjury wage for the period from June 10 to July 18, 2002, are against the great weight of the evidence. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained an injury in the course and scope of his employment on _____; that he did not timely report his injury to his employer; and that, because of his work-related injury, the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage for the period from June 10 to July 18, 2002. Those 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).

The hearing officer determined that the credible evidence established that the claimant injured his back at work on _____, pulling on a pallet jack and that his injury caused him to be unable to work from June 10 to July 18, 2002. However, the hearing officer was not persuaded that the claimant sustained his burden of proving that he timely reported his injury to his employer or had good cause for his failure to do so.

The hearing officer was acting within his province as the fact finder in making each of those determinations. 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, notice, or disability 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 we have affirmed the determination that the claimant did not sustain a compensable injury because he did not timely report it to his employer, we likewise affirm the determination that he did not have disability.

The hearing officer's decision and order are 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

**RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge