

APPEAL NO. 031668
FILED AUGUST 4, 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 June 2, 2003. The hearing officer determined that the appellant (claimant) did not sustain a bilateral carpal tunnel syndrome and/or bilateral epicondylitis injury in the course and scope of his employment; that the claimant did not timely report the alleged injury to his employer without good cause for his failure to do so; and that the claimant did not have disability. The hearing officer also determined that a date of injury issue was actually litigated by the parties; thus, he resolved that issue by determining that the date of the alleged injury is _____. In his appeal, the claimant argues that each of those determinations is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury; that the date of the alleged injury is _____; and that the claimant did not timely report his alleged injury to his employer. The claimant had the burden of proof on those issues and they presented questions of fact for the hearing officer to resolve. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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 injury, notice, and date of injury issues. The hearing officer simply was not persuaded that the claimant sustained his burden of proof on any issue. The hearing officer was acting within his 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 determination 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 hearing officer's determinations that the claimant did not sustain a compensable injury and that

he failed to timely report his alleged injury to the employer, we likewise affirm the determination that the claimant did not have disability.

The hearing officer's decision and order are affirmed.

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

**RICK NIGHT
105 DECKER COURT, SUITE 600
IRVING, TEXAS 75062.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge