

APPEAL NO. 031742
FILED AUGUST 20, 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 12, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that the respondent (carrier) is not relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001; and that the claimant does not have disability. The claimant appealed, disputing the compensable injury and disability determinations. The carrier responded, urging affirmance of the disputed determinations. The carrier also contended in its response that the hearing officer incorrectly determined that the claimant notified his employer within 30 days as required by Section 409.001. We note that the carrier's response was not received in time to be considered as an appeal and therefore we will not address the carrier's contention that the hearing officer's determination of timely notice was in error.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury. The claimant had the burden to prove that he sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question 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).

In this instance, there was conflicting evidence on the injury issue. The hearing officer noted in her Statement of the Evidence that the claimant's testimony regarding the mechanism of injury was not credible or persuasive, and that the carrier's witnesses were credible in their testimony that the claimant did not sustain an injury while at work, but that the claimant had asked them to state that the injury did in fact occur while at work. The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Our review of the record does not demonstrate that the challenged determination is 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 determination that the claimant did not sustain a compensable injury 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 the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **GREAT WEST CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**DAVID L. SARGENT
1717 MAIN STREET, SUITE 3200
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica Lopez-Ruberto
Appeals Judge

Robert W. Potts
Appeals Judge