APPEAL NO. 032311
FILED OCTOBER 22, 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 (CCH) was held on July 28, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury in the course and scope of his employment when he was involved in a motor vehicle accident (MVA) on _____; that the respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001; and that the carrier is relieved from liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation within one year as required by Section 409.003. The claimant appealed, arguing that the determinations are so contrary to the great weight and preponderance of the evidence as to be manifestly unjust. The carrier responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant was involved in a MVA on _____. In dispute is whether the claimant was in the course and scope of his employment at the time of the MVA. The carrier contended that the claimant was not scheduled to work that day and was not aware of the claimant's contention that he was on his way to solicit business until the day of the CCH. The hearing officer did not err in determining that the claimant was not acting within the course and scope of his employment at the time that he was involved in the MVA. Course and scope of employment is defined as an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer.

Whether the claimant was engaged in an activity in furtherance of his employment at the time of the accident was a factual question 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). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence established. The hearing officer was not persuaded by the evidence that the claimant was furthering the affairs of the employer at the time he was involved in the MVA. Nothing in our review of the record indicates that the hearing officer's decision 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).

Section 409.001(a) provides that an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the injury occurred. The carrier contended that

although the employer first learned of the MVA on June 11, 2001, the employer did not know the claimant was alleging it was work related until over a year later. The hearing officer determined that the claimant did not report his injury as a work-related injury on or before July 9, 2001, and that the claimant did not have good cause for failing to do so. The hearing officer concluded that the carrier is relieved of liability under Section 409.002 because the claimant failed to timely notify his employer of his injury under Section 409.001. We conclude that the hearing officer's determination that the claimant failed to timely notify his employer of his injury is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*. The hearing officer's determination on the timely notice issue is affirmed.

Section 409.003 requires that a claimant file a claim for compensation with the Texas Workers' Compensation Commission (Commission) not later than one year after the date of injury. Pursuant to Section 409.004, failure to do so will relieve the carrier of liability. The claimant had the burden to prove that he filed his claim of injury within one year of the date of his injury pursuant to Section 409.003, or had good cause for not timely filing. The test for good cause is that of ordinary prudence; that is, whether the employee has prosecuted his or her claim with the degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances. Hawkins v. Safety Casualty Company, 207 S.W.2d 370 (Tex. 1948). We review the hearing officer's determination of whether or not good cause exists under an abuse-of-discretion standard. In view of the evidence presented, the hearing officer could find, as she did, that there was no good cause for the claimant's failure to file a claim within one year of the date of injury.

Section 409.008 provides that if an employer or the employer's insurance carrier has been given notice or has knowledge of an injury to or the death of an employee and the employer or insurance carrier fails, neglects, or refuses to file the report under Section 409.005 (Employer's First Report of Injury or Illness (TWCC-1)), the period for filing a claim for compensation under Sections 409.003 and 409.007 does not begin to run against the claim of an injured employee or a legal beneficiary until the day on which the report required under Section 409.005 has been furnished. Section 409.005(a) provides that an employer shall file a written report with the Commission and the employer's insurance carrier if: (1) an injury results in the absence of an employee of that employer from work for more than one day; or (2) an employee of the employer notifies that employer of an occupational disease under Section 409.001. We have previously held that an employer's lack of notice of injury or knowledge of injury will prevent any tolling under Section 409.008. Texas Workers' Compensation Commission Appeal No. 94268, decided April 19, 1994. *See also* Texas Workers' Compensation Commission Appeal No. 93858, decided November 9, 1993; and Texas Workers' Compensation Commission Appeal No. 931157, decided February 3, 1994. Since the hearing officer found that the claimant did not timely report his alleged work-related injury of _____, to his employer, and also determined that the date on which the employer had actual knowledge of the alleged work-related injury was July

17, 2002, the finding and conclusion that claimant's time for filing his claim was not tolled pursuant to Section 409.008 are similarly supported by sufficient evidence.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **SIERRA INSURANCE COMPANY OF TEXAS** 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.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge