

APPEAL NO. 032663
FILED NOVEMBER 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 (CCH) was held on September 3, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that he did not sustain disability as a result of the claimed injury; and that the respondent (carrier) is relieved of liability under Section 409.002 because the claimant did not timely notify the employer of the claimed injury pursuant to Section 409.001. The claimant appeals, asserting that the hearing officer's determinations are against the great weight of the evidence and that the appropriate legal standards were not applied. The carrier responds, urging affirmance.

DECISION

Affirmed.

After a detailed summary of the evidence presented at the CCH, the hearing officer found that the claimant did not sustain harm or damage to his physical structure during the course and scope of his employment on _____. The hearing officer noted that the medical records showed that there was an increase in pain and/or symptoms after the _____, incident, but that the records "also establish that there was no new harm or damage to the claimant's neck and back." She states that the claimant's doctor "did not mention any physiological changes since his earlier examinations," that "testing did not reveal increased injury, in that the claimant's reflexes, sensory tests and measured upper and lower extremity strengths were normal," and the "EMG was normal for both the cervical and lumbar nerves." The hearing officer indicated that the findings of the claimant's new treating doctor were not persuasive because they were based on an incorrect history.

Whether or not an injury has occurred is a question of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993. 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 as well as of the weight and credibility that is to be given the evidence. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight 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 Co., 715 S.W.2d 629, 635 (Tex. 1986). In this case, the hearing officer's discussion makes clear that she did not believe that there was an aggravation of the previous injury such that a new injury was established. The evidence sufficiently supports her findings, and it is clear that she has properly analyzed the evidence and applied the law.

The claimant had the burden to prove that he notified his employer of an injury not later than the 30th day after the date on which the injury occurred pursuant to Section 409.001(a), or had good cause for failing to give timely notice of injury to the employer. Conflicting evidence was presented at the CCH on the disputed notice issue. The hearing officer found the testimony of the employer's witnesses that the first notice they had of a claimed _____, injury was in April 2003 to be credible. The hearing officer found that the claimant did not establish that he had good cause for the untimely notice. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination on the disputed notice issue 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.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as 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 **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge