

APPEAL NO. 033007
FILED DECEMBER 30, 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 October 28, 2003. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that he did not have disability; and that the claimant did not have good cause for failing to attend the August 27, 2003, setting of the hearing. In his appeal, the claimant challenges each of those determinations as being against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) asks that the appeal be dismissed for failure to comply with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(4) (Rule 143.3(a)(4)), regarding service on the other party. In the alternative, the carrier urges affirmance.

DECISION

Affirmed.

We first address the carrier's request for dismissal of the appeal. The record indicates that the claimant served the appeal on the carrier by regular mail instead of by certified mail as is required in Rule 143.3(a)(4) and Rule 143.1(5), which defines service as presentation to a party in person or by certified mail, return receipt requested. We have said that an appellant's failure to serve an appeal on a party in compliance with Rule 143.3(a)(4) does not affect our jurisdiction. See Texas Workers' Compensation Commission Appeal No. 91120, decided March 30, 1992. Accordingly, we will not dismiss the claimant's appeal.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The claimant had the burden of proof on the injury issue and it presented a question 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). In this instance, the hearing officer simply did not believe the claimant's testimony and the evidence tending to demonstrate that he sustained damage or harm to the physical structure of his body in the two incidents at work on _____, as claimed. 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 hearing officer's injury 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 that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

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 determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability.

Finally, we find no merit in the assertion that the hearing officer erred in determining that the claimant did not establish good cause for his failure to attend the August 27, 2003, setting of the hearing. The claimant stated that he mistakenly believed that the hearing was on Thursday rather than Wednesday and that, as a result, he failed to attend the hearing. The hearing officer did not err in determining that being mistaken as to the day of the week of the hearing simply did not rise to the level of good cause such that the claimant's failure to attend the hearing could be excused.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** 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.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge