

APPEAL NO. 040836
FILED MAY 26, 2004

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 March 30, 2004. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on _____; (2) because the claimant did not sustain a compensable injury, he did not have disability; and (3) the respondent (self-insured) is not relieved from liability under Section 409.002 because the claimant timely notified his employer of his _____, injury pursuant to Section 409.001. The claimant appealed the hearing officer's injury and disability determinations based on sufficiency of the evidence grounds. The self-insured responded, urging affirmance.

DECISION

Affirmed.

The claimant asserts that his condition to his feet was caused by the repetitive trauma of constant walking and standing on a concrete floor at work. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury which is defined in Section 401.011(36) and excludes an ordinary disease of life to which the public is exposed outside of employment. The injury 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). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). In the instant case the hearing officer found that the claimant sustained an injury on _____, but that it was not compensable because it was an ordinary disease of life. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination on the injury issue is supported by sufficient evidence and it is not so against the great weight and preponderance 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 v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The existence of a compensable injury is a prerequisite to finding disability. Section 401.011(16). Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a certified self-insured)** 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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Elaine M. Chaney
Appeals Judge