

APPEAL NO. 041202  
FILED JUNE 22, 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 May 4, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that the claimant has not had disability as a result of the claimed injury of \_\_\_\_\_; that the respondent (carrier) is not relieved of liability under Section 409.002 because the employer had actual knowledge of the alleged injury; and that the claimant's average weekly wage (AWW) is \$278.00. The claimant appealed the hearing officer's determinations that he did not sustain a compensable injury on \_\_\_\_\_, and that he has not had disability. The carrier requests affirmance. There is no appeal of the hearing officer's determinations on the issues of notice of injury and AWW.

DECISION

Affirmed.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). The hearing officer found that on \_\_\_\_\_, there was an incident at work in which a dolly struck the claimant's left foot, but that the claimant did not sustain damage or harm to the physical structure of his body in that incident. The hearing officer concluded that the claimant did not sustain a compensable injury on \_\_\_\_\_. Conflicting evidence was presented on the issue of whether the claimant sustained a compensable injury on \_\_\_\_\_. While there is evidence that the claimant was limping, that would not compel a finding in his favor because the claimant testified that he has been limping ever since he had a work-related injury to his right foot in February 2003. The earliest medical record in evidence is dated July 9, 2003, two months after the alleged injury to the left foot. The hearing officer could also consider the surveillance video that was in evidence. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the claimant did not sustain a compensable injury on \_\_\_\_\_, is not 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 (Tex. 1986). The hearing officer did not err in determining that the claimant did not have disability from an \_\_\_\_\_, injury, because without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL RAY OLIVER, PRESIDENT  
221 WEST 6TH STREET, SUITE 300  
AUSTIN, TEXAS 78701-3403.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Daniel R. Barry  
Appeals Judge