APPEAL NO. 041907
FILED SEPTEMBER 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 July 14, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable left ankle injury on _____, and that the appellant (carrier) 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 carrier appeals, contending that the claimant failed to establish the existence of an injury as defined in Section 401.011(26), failed to establish causation or that he had "traumatic arthritis" and that the claimant failed to corroborate his testimony on timely reporting. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant, a plastering foreman, testified that he sustained a left ankle sprain injury on _____, when he stepped into a four inch deep (12 X 12 inch) hole in a concrete floor. The claimant testified that he reported his injury to his supervisor on/or about November 7, 1999, while hunting on a deer lease and again reported the injury on March 2, 2000, to the company owner after being asked why he was limping. The hearing officer excluded the medical reports from the treating doctor on the carrier's objection of lack of timely exchange. The only documents in evidence were the benefit review conference report and the Employer's First Report of injury or Illness (TWCC-1). The carrier argues that there was insufficient evidence to support the hearing officer's determinations.

The Appeals Panel has long held that in workers' compensation cases the issues of injury and disability may be established by the testimony of the claimant alone. (Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.)). Likewise whether the claimant timely reported his injury on November 7, 1999, and again on March 2, 2000 (the hearing officer found that the claimant had trivialized his injury and therefore had good cause for not reporting the injury again sooner) can be supported by the claimant's testimony. The hearing officer is the sole judge of the weight and credibility to be given to the evidence (Section 410.165(a)) and he may believe all, part or none of the testimony of any witness, including the claimant. (Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ)). Contrary to the carrier's assertion, the claimant need not necessarily establish corroboration of his claimed reporting and the supervisor, to whom the claimant said he reported his injury, was equally available to the carrier.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record, listened to the claimant's testimony, and decided what facts were established. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for United Pacific Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Margaret L. Turner
Appeals Judge