

APPEAL NO. 042090
FILED OCTOBER 5, 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 22, 2004. The hearing officer resolved the disputed issue by deciding that (decedent) did not sustain a compensable injury in the course and scope of his employment on _____; that the claimed injury of _____, did not contribute to the decedent's death on (date of death); and that the respondent (carrier) is relieved from liability under Section 409.004 because of the appellant's (claimant beneficiary) failure to timely file a claim for compensation with the Texas Workers' Compensation Commission (Commission) as required by Section 409.007. The claimant beneficiary appealed, arguing that there is insufficient evidence to support the decision and alternatively that the findings are against the great weight and preponderance of the evidence. The carrier responded, urging affirmance. The carrier maintains that the hearing officer's findings of fact and conclusions of law are supported by legally and factually sufficient evidence.

DECISION

Affirmed.

Although the hearing officer was persuaded that the credible evidence established that the decedent tripped over a line at work on _____, the hearing officer was not persuaded that the decedent injured his left leg on that date. A statement from a coworker dated July 3, 2002, was in evidence which stated that the decedent tripped over a hose and fell but that he got back up, stated he was okay, and worked the rest of the day without incident. Whether or not the decedent sustained a compensable injury in the course and scope of his employment on _____, was a question of fact for the hearing officer to resolve. The claimant beneficiary contended that the decedent's cause of death was the claimed injury to the left leg, which caused blood clots which embolized into his lungs. The report from the medical examiner stated that the cause of the claimant's death was ischemic—hypertensive heart disease. There were conflicting medical opinions regarding the cause of the claimant's death. The hearing officer found that the credible medical evidence does not establish a causal link between the alleged _____, claimed left leg injury and the cause of the decedent's death. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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).

The hearing officer found that the claimant beneficiary or anyone acting on her behalf did not file a Notice of Fatal Injury or Occupational Disease/Claim for Compensation for Death Benefits (TWCC-42) with the Commission until November 25, 2003, and demonstrated insufficient good cause for failing to file earlier. Section 409.007 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 122.100 (Rule 122.100) require that a claim for death benefits be filed with the Commission not later than the first anniversary of the date the decedent died. Failure to timely file a claim bars the claim unless the potential beneficiary is a minor or incompetent, or good cause exists for the failure to timely file the claim. The hearing officer did not believe the claimant beneficiary's testimony that she completed the TWCC-42 and sent it to the Commission on June 10, 2002. The record reflects that the form letter to potential beneficiaries was mailed on July 10, 2002. The hearing officer noted that the Commission's first record of contact by the claimant beneficiary was on November 19, 2003, to inquire if the Commission had been contacted by her attorney. Under these circumstances, we cannot conclude that the hearing officer abused his discretion in determining that there was no good cause for the failure to timely file the claim. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). There is sufficient evidence to support the hearing officer's determination that the carrier is relieved from liability because the claimant beneficiary failed to timely file a claim for compensation.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ST. PAUL GUARDIAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge