

APPEAL NO. 042309
FILED OCTOBER 19, 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 August 16, 2004. The hearing officer determined that: (1) the respondent (carrier) is relieved from liability under Section 409.002, because the appellant (claimant) failed, without good cause, to timely notify his employer of an injury pursuant to Section 409.001; (2) although the claimant sustained an injury in the course and scope of his employment, such injury is not compensable due to the claimant's failure to timely notify his employer of such injury pursuant to Section 409.001; (3) the claimant does not have disability because he did not sustain a compensable injury; and (4) the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under group insurance. The claimant appeals the notice, injury, and disability determinations on sufficiency of the evidence grounds. The carrier urges affirmance. The hearing officer's election-of-remedies determination was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in making the complained-of determinations. The hearing officer's decision turns on whether the claimant notified his employer of an injury within 30 days after the date of injury. This was a question of fact for the hearing officer to resolve. 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). Nor can we conclude that the hearing officer abused his discretion in reaching his decision. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The decision and order of the hearing officer is affirmed.

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

**LEO MALO
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge