APPEAL NO. 010226

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 December 20, 2000. With respect to the issues before him, the hearing officer determined that the respondent (claimant) timely reported his injury to his employer pursuant to Section 409.001 and the appellant (self-insured) is not relieved of liability under Section 409.002; that the claimant sustained a compensable injury on _____; and that the claimant did not make an election to receive group health benefits in lieu of workers' compensation benefits and that the claimant is not barred from pursuing workers' compensation benefits. In it's appeal, the self-insured asserts that those determinations are against the great weight and preponderance of the evidence. In his response to the self-insured's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in his determination that the claimant timely notified the employer of a work related injury pursuant to Section 409.001 and that the self-insured is not relieved from liability under Section 409.002. Whether, and if so when, notice is given is a question of fact for the hearing officer to decide. We will reverse a factual determination of a hearing officer only if that determination is 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, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). In this instance, the hearing officer determined that the claimant advised his employer that he had injured his hand on _____, when he took his doctor's light-duty release to the employer. In addition, the hearing officer determined that the employer knew that the claimant was asserting that his injury was work related no later than _____, when the employer advised the claimant that his workers' compensation benefits may be denied if he does not comply with the work restrictions listed in the employer's light-duty job offer. There was conflicting evidence from the claimant as to whether he advised the employer that his hand injury was work related. The hearing officer credited that portion of the testimony indicating that the claimant so advised his employer. In addition, the hearing officer determined that the employer's letter to the claimant advising him that his workers' compensation benefits might be denied if he did not comply with the light-duty work restrictions provided corroboration for the testimony that the claimant had reported an injury and told the employer that it was work related. The hearing officer was acting within his province as the fact finder in so resolving the conflicts in the claimant's testimony and in drawing that inference from the employer's letter to the claimant. Nothing in our review of the record demonstrates that hearing officer's notice determination is so against the great weight of the evidence as to compel its reversal on appeal. Finally, we note that there is evidence that on May 16, 2000, the claimant reported to Ms. G and Mr. M that he had injured his hand at work on _____, and that those individuals performed supervisory functions in that they told other employees to do "this or that." In order for a

person to be considered as holding a supervisory position for purposes of receiving notice of an injury, it is not necessary to have hiring, firing, and disciplinary authority, rather, task-assigning authority may be sufficient to confer the status of a supervisor. *See* Texas Workers' Compensation Commission Appeal No. 010020, decided February 12, 2001. Thus, the claimant's having told Ms. G and Mr. R about his injury and the fact that it was work related would also be sufficient to satisfy the notice requirements of Section 409.001.

The hearing officer did not err in his determination that the claimant sustained a compensable injury on _____. The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability may be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence under Section 410.165(a). Thus, he resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The hearing officer's injury and disability determinations are supported by sufficient evidence and are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to disturb those determinations. Pool, *supra*; Cain, *supra*.

Finally, the hearing officer did not err in determining that the claimant is not barred from receiving workers' compensation benefits because of an election to receive benefits under a group health insurance policy. Under Bocanegra v. Aetna Life Ins. Co., 605 S.W.2d 848 (Tex. 1980) any election of remedies which is held to bar a claimant from seeking an alternative relief must be made as a result of (1) informed choice, (2) between two rights, remedies, or states of fact that (3) are so inconsistent (4) as to constitute manifest injustice. An election should be imposed sparingly, reserved for instances where the "assertion of a remedy, right, or state of facts is so unconscionable, dishonest, contrary to fair dealing, or so stultifies the legal process or trifles with justice or the courts as to be manifestly unjust." *Id.* at 851. *See* Texas Workers' Compensation Commission Appeal No. 990022, decided February 19, 1999. The evidence presented in this record does not meet the standards set forth in Bocanegra, *supra*; thus, the hearing officer did not err in determining that no election of remedies was made by the claimant.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge