APPEAL NO. 031099
FILED JUNE 12, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on April 2, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant did not have disability as he did not sustain a compensable injury; that the respondent (carrier) is not relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001; and that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a private health insurance policy. The claimant appealed, disputing the compensable injury and disability determinations. The carrier responded, urging affirmance.

DECISION

Affirmed.

It was undisputed that the claimant sustained severe injuries in a motor vehicle accident (MVA) which occurred on _____. The claimant, the general manager of a restaurant, testified that he was not feeling well that morning and there was some evidence that he may have passed out at work, prior to the MVA. The claimant testified that he was going to take the daily deposit to the bank and return the deposit slip to the restaurant prior to going home for the day. There was conflicting evidence from a coworker that the claimant intended to make the bank deposit and continue to his residence without returning to the restaurant.

The burden is on the claimant to prove, by a preponderance of the evidence, that an injury occurred within the course and scope of employment. Texas Employers Insurance Co. v. Page, 553 S.W.2d 98 (Tex. 1977). Section 401.011(12)(B)(i) and (ii) embody the so-called "dual purpose doctrine." These subsections provide that the phrase "course and scope of employment" does not include travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless "the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the travel" and "the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel." Texas Workers' Compensation Commission Appeal No. 002187, decided October 20, 2000. In order to come within the dual purpose doctrine an employee must satisfy both requirements and the question of whether the two requirements of the dual purpose doctrine are met is a question of fact. St. Paul Fire and Marine Insurance Co. v. Confer, 956 S.W.2d 825 (Tex. App.-San Antonio 1997, pet. denied).

There was sufficient evidence to support the hearing officer's finding that the travel on _____, would have been made had there been no affairs or business of the employer to be furthered by the travel. The hearing officer noted in her Statement of the Evidence that the claimant's contention that he would have returned to work is not probable and is controverted by the evidence.

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who 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 Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **FIDELITY AND GUARANTY INSURANCE UNDERWRITERS** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge