APPEAL NO. 92294

A contested case hearing was held in (city), Texas on June 1 and 3, 1992, (hearing officer) presiding as hearing officer. She determined that the appellant sustained an injury to her back in the course and scope of her employment but that the appellant did not notify her employer of the injury within 30 days. Accordingly, the hearing officer denied benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). Appellant urges that the evidence establishes that timely notice was given and that the employer had actual notice of the injury. Respondent's position is that the hearing officer's findings of fact, conclusions of law, order and decision are correct and should be affirmed.

DECISION

Concluding that the hearing officer's determination that timely notice of the injury was not given to the employer is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust, we reverse and render a new decision and order.

One of the issues at the hearing was whether the appellant suffered a back injury in the course and scope of her employment on or about (date of injury). The hearing officer found that the appellant had sustained a compensable injury, the evidence of record is fully supportive of this determination and the issue is not further raised on appeal. Therefore, it need not detain us further and that part of the case stands as decided by the hearing officer.

Regarding the timely notice to the employer of the injury, a short recitation of the evidence is necessary. The appellant testified that on (date of injury), she and her immediate supervisor, (CR), the assistant manager, were working for the employer, (Shop) when a lady confined to a wheelchair required help to go to the toilet. Appellant was the principal one to assist, including bearing the weight of the lady in the restroom to help her on and off the toilet. Shortly after this, the appellant told CR that her back hurt and that she thought she had "lifted the customer wrong." Appellant went to the doctor several days later and medical records established that she has sustained a back injury which was found by the hearing officer to be compensable except for the untimely notice.

The appellant further testified that she did not tell the shop manager or the shop owner (neither of whom were present at the time, about her injury and that she had worked a couple of days after (date of injury), but finally had to go home on the third day because of intense back pain. She did not work after that. She also stated that when one of her doctors advised her that she needed to file for workers' compensation, she called the (city) field office of the Texas Workers' Compensation Commission (Commission) and was told that the employer did not have workers' compensation coverage. Over the ensuing months she was repeatedly told this by the Commission even though she was subsequently told by CR that the employer did have coverage. Evidence in the file, including a statement from the Commission's (city) field office, verifies the confusion over coverage because such did

not show on the Commission's computer. During this period, the appellant states she did not think there was workers' compensation coverage. Once that issue was resolved, she filed a claim.

CR was called as a witness and corroborated the incident with the lady in the wheelchair, and confirmed that it was the appellant who did all the lifting and assisting of the lady once they got her to the bathroom. CR stated that subsequently the appellant told her "Go'l, my back hurts now from helping you with that lady." CR did not say anything to the appellant and testified that she did not know how to do workers' compensation forms and that she had never been instructed what to do if someone gets hurt at work. She thought it was the appellant's responsibility to tell the manager or owner. CR stated that the appellant had complained of her back hurting on previous occasions. There was nothing to dispute CR being in a supervisory position for purposes of notice of injury as contemplated by Article 8308-5.01(c). The shop owner and the manager testified that appellant did not report the job related injury to them and that the appellant had complained of back pain in the past, apparently to get out of mopping the shop floor. On (date of injury), the appellant was not able to mop because of her back pain. She was given a reprimand for this failure or refusal to mop.

In the two critical findings on the notification issue, the hearing officer found.

**11.** Although the Claimant complained about back pain to [CR], [CR] did not know that an injury arose out of her employment, and it is not reasonable to infer that the Claimant was injured, due to the Claimant's history of making complaints about having pain in her back while at work.

**15.** The Employer did not know that the Claimant had sustained an injury on-the-job until February, 1992, when the Carrier notified the Employer.

We view the evidence as absolutely compelling that the appellant notified a proper employer representative that she injured herself on the job. Not only was CR, the employer's representative and the assistant manager, present at the time of the incident giving rise to the injury, she was a participant in helping the lady needing assistance. CR testified she left the bulk of the assistance to the appellant and acknowledged the lady weighed 140 to 150 pounds. Shortly thereafter, the appellant specifically related her back pain to the specific incident of lifting and assisting the lady. CR clearly states the appellant related the specific incident of lifting and assisting a heavy person to experiencing back pain at that time. There is no requirement that the appellant notify others in the supervisory chain nor does it adversely affect an otherwise valid notice that the person to whom notice is given, if within the class set out in Article 8308-5.01(c), neglects to take appropriate action on the notice.

While we in no way suggest that notice requirements, including notice of injury requirements, should be taken lightly (*See* Texas Workers' Compensation Commission

Appeal No. 92278 (Docket No. redacted) decided August 10, 1992), the purpose of a timely notice (to enable an investigation) can be fulfilled without the need of any particular form or manner of notice. De Anda v. Home Insurance Company, 618 S.W.2d 529 (Tex. 1980). Further, where there is actual knowledge by the employer (through his representative) such knowledge need not apprise the employer of the exact time, place, and extent of the injury. De Anda *supra.* It is sufficient for an injured employee's notice to apprise the employer of the general nature of the injury and its job relationship. Texas Employers Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.- El Paso 1989, no writ). Where, as here, the acknowledged on-the-job incident and the complained of back pain related to the incident are so close in time, the job relationship is sufficiently established. *See* Texas Workers' Compensation Commission Appeal No. 92204 (Docket No. redacted) decided July 6, 1992.

The decision and order of the hearing officer are reversed and benefits under the Texas Workers' Compensation Act are restored.

_____

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____

Joe Sebesta
Appeals Judge

_____

Susan M. Kelley
Appeals Judge