APPEAL NO. 92370

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp. 1992). On June 25, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He found that claimant, respondent herein, reported her injury timely and ordered that benefits be provided. Appellant asserts that the hearing officer's finding that notice only consisted of a declaration that the injury "may be" work related was insufficient on which to base a decision for respondent. No response to the appeal was received by respondent.

DECISION

Finding that the decision is based on sufficient evidence, we affirm.

Respondent worked for (employer) as a department manager, having been with employer for nine and one-half years. On (date of injury), she picked up a box containing a stereo that was in an aisle and put it on an overhead shelf. In doing so she lost her balance, almost dropped it, and extended her back in holding it. She stated that she had an initial pain in her back. She attributed the pain in her back the next morning to possible tiredness since it was the end of the week, but was afraid she had injured herself. She called her doctor's office on (date) but her doctor was not in so she talked to (Dr. S). Medicine was prescribed but the pain got worse so she went in to see Dr. S on October 10th. After she saw Dr. S on October 10th, she reported to her supervisor, (MG), that on (date of injury), she picked up a stereo, lost her balance in shelving it, and extended her back. Her testimony continued:

Q:Did you mention to him anything at that time about workers' compensation?

A:No, no, I told him I really didn't want an accident charged to the store. I was trying to avoid that.

Q:Did you mention to him at any time at that point on the 10th or 11th that you wanted to draw short-term disability?

A:Yes, we discussed that.

At the hearing, MG confirmed that a conversation, similar to the wording of the above related one, did take place.

After seeing (Dr. W), to whom she had been referred, on October 28, 1991, respondent either talked with MG that day or on October 29, 1991. She again mentioned the accident and added that Dr. W said that the extension of her back in handling the stereo most likely caused the problem. She also said Dr. W wanted further tests to see the extent of injury. MG wished her well and did not ask any questions about the accident.

When respondent filed for short term disability benefits, she wrote on the form, "[i]t has not been determined that the back condition is due to an accident, the disk is herniated and another is bulging. Cause is not known at this time." She apparently signed this form in early December 1991. When pressed on cross-examination as to why she did not earlier file a claim under workers' compensation, respondent said:

> All through the years that I've worked, anybody that's ever filed a workers' compensation claim is treated like a common thief; that they're trying to get to the company for something. I was trying so hard to avoid our store being charged with an accident because I felt loyal to (employer). I also didn't want to file workers' comp and be thought of as somebody that's trying to get something for nothing. I was trying to get able to go back to work, which I wanted so badly to, and thought up until then that maybe there was a possibility I could do that.

Respondent's notice of injury and claim (TWCC Form 41) is dated February 18, 1992.

Appellant takes the position that the respondent did not timely inform the employer that the injury was work related. It cites Texas Workers' Compensation Commission Appeal No. 91066 (Docket No. redacted) decided December 4, 1991, and Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied) as requiring that notice specify that the injury was work related. Mathes dealt with a repetitious trauma injury allegation in which the claimant did not provide any indication of a connection between work and the herniated disc prior to having surgery in Tennessee. That court said that it was "unable to find in the record where the employer received any notice of the work related nature of Appellee's incapacity or disability." (emphasis added). Appeal No 91066, *supra*, correctly said that notice of a back condition without notice that it was work related "generally" would not be sufficient. In the case before us, initially the employer was given notice of date, time and place of an accident at work that caused pain in the back. Before the month was over, employer was given added notice that respondent's doctor attributed her injury to the extension of her back in handling the stereo. While the hearing officer chose to describe these notices as "may be" work related, they did serve to sufficiently apprise employer of an accident that it could investigate. The situation before us is not controlled by Appeal No 91066 which spoke only of notice of a bodily condition with no attribution to an event at work.

The Supreme Court in Bocanegra v. Aetna Life Ins. Co., 605 S.W.2d 848 (Tex. 1980) looked at a claim for health insurance after a worker's compensation claim had been settled. The court was concerned with an election of remedies issue and said that a choice between inconsistent remedies would not bar further action unless that choice was made with a "full and clear understanding" of the facts and circumstances. While the court looked at appellant's repeated lifting and handling of books as a question concerning occupational disease, it went on to comment:

> Uncertainty in many complex areas of medicine and law is more the rule than the exception. It would be a harsh rule that charges a layman with knowledge of medical causes when, as in this case, physicians and lawyers do not know them.

The hearing officer in the case before us concluded that timely notice of injury was given. Notwithstanding the equivocal finding regarding notice, the evidence sufficiently supports that conclusion. We observe that respondent, in filing a claim on or about February 18, 1992, clearly met the requirements of Article 8308-5.01 of the 1989 Act which allows one year for an employee to decide whether to pursue a workers' compensation claim. The findings of the hearing officer are not against the great weight and preponderance of the evidence and the order to provide benefits is based on sufficient evidence of record. We affirm.

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Joe Sebesta
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge