APPEAL NO. 92524

A contested case hearing was held in (city), Texas, on August 20, 1992, with (hearing officer) presiding, to determine whether respondent (claimant) notified appellant, her employer (employer/carrier), of her (date of injury) knee injury no later than 30 days after that date, or had good cause for failing to do so. The hearing officer concluded that claimant did have good cause for failing to notify employer/carrier of her injury until February 28, 1992, and employer/carrier requests our review of the sufficiency of the evidence to support such determination. Claimant urges our affirmance.

DECISION

Finding the evidence sufficient to support the hearing officer's findings and conclusions, we affirm the decision below.

Claimant testified that on (date of injury), a Friday, while working at (A) school as a substitute teacher, she slipped on some soda spilt on a staircase, grabbed the guard rail, and injured her right knee. She felt much pain and had immediate swelling, but completed her work. The following Monday she returned to work but had to limp and could barely walk by the end of the day. On (date), she went to a medical clinic where she was seen by a physician's assistant and told she had a sprained knee. Claimant considered the injury a minor one and expected it would resolve in a few weeks. The pain persisted and she returned to the clinic on January 2, 1992 where the physician's assistant scheduled her for an appointment with (Dr. L). According to claimant's medical records, Dr. L saw her on January 22nd, reviewed her x-rays, and arranged for her to obtain a magnetic resonance imaging scan (MRI). Claimant was informed by Dr. L on January 29th that the MRI scan revealed a torn medial meniscus cartilage requiring arthroscopic repair. On February 20th, Dr. L performed an arthroscopy and partial medial meniscectomy on claimant's right knee.

Claimant testified that when Dr. L advised her on January 29th of the torn medial meniscus and the need for surgery, she then realized she had a serious knee injury and not just a sprain. Claimant testified, variously, that at sometime around the end of January or in February, she spoke to a telephone receptionist for employer/carrier, advised this person that she had a job-related knee injury, and asked who to call. She was referred to employer/carrier's claims office headed by (Mr. B). She said she then talked to this office and was told she was required to go to the school where the injury occurred, report her injury to the principal of that school, and complete an accident report. She said that principal would have been her supervisor at the time of the injury. She stated it took her several weeks to get in to see the principal of (A) school because he was not available and that the principal gave her an appointment for February 28th, the day she saw him about her injury. She said she was not advised by employer/carrier's claims office of any 30-day time limit pertaining to her injury. While she taught at (A) school on the date of her injury, in late December she began substitute teaching at (W) school where she remained employed until May 1992. She said she was never provided with any written materials on the procedures for filing a workers' compensation claim with employer/carrier, nor had she seen any notices or other posted information concerning claims procedures at the various schools where she

taught. (Mr. B), who heads employer/carrier's claims office, testified that it was employer's policy to have such notices posted in various locations at its schools.

Carrier introduced the statement of (Mr. G), the principal of (W) school, obtained after the benefit review conference. (Mr. G) said that while claimant had told him of her need for his permission to have knee surgery, she did not tell him she had injured her knee at either (W) or (A) schools. (Mr. B) testified to the several schools where claimant had taught from the date of her injury through May 1992. He stated that her supervisor is the principal of the school wherever she may be teaching from time to time. (Mr. B) also said that employer/carrier has informational signs concerning workers' compensation claims posted at various locations in its schools. He said it is employer/carrier's policy that employees advise their immediate supervisors of injuries, and that such supervisors are, in turn, to advise his office which prepares the required forms. He said that claimant did complete an accident report on February 28th, the date she got in to see her supervisor.

The hearing officer found, among other things, that claimant believed her knee injury to be a minor sprain which would resolve in time until it was diagnosed as a medial meniscus tear on January 29th; that early in February claimant notified employer's claims office that she wished to file a claim and was told to contact the principal of (A) school where the injury occurred; that claimant called that principal several times before obtaining the appointment to meet with him on February 28th; and, that she gave notice of her injury to employer on February 28th. Based on these findings, the hearing officer concluded that while claimant did not give notice of her injury to her employer within 30 days of her (date of injury) injury, she did establish that good cause existed for her failure to notify employer of her injury until February 28th.

The Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-5.01(a) (Vernon Supp. 1992) (1989 Act) provides that an employee shall notify the employer of an injury not later than the 30th day after the date on which the injury occurs. Article 8308-5.02 provides that the failure of an employee to notify the employer of an injury as required by Article 8308-5.01(a) relieves the employer and its insurance carrier of liability under the 1989 Act unless the employer or its insurance carrier had actual knowledge of the injury, or do not contest the claim; or unless the Texas Workers' Compensation Commission determines that good cause exists for failure to give such notice in a timely manner. We have previously observed that the test for the existence of good cause for failing to timely notify an employer of an injury is that of ordinary prudence. Texas Workers' Compensation Commission Appeal No. 92386, decided September 8, 1992. In that decision we cited the following from a prior decision:

A bona fide belief of a claimant that injuries are
not serious is sufficient to constitute good cause
for delay in giving notice of injury. (Citation
omitted.) The claimant must show that good cause for
failure to notify the employer continued up to the

date of notice. (Citation omitted.)

We are satisfied the evidence is sufficient to support the hearing officer's determination of good cause. It was not until January 29th that claimant was informed by a doctor that she had a serious knee injury requiring surgery rather than a sprain which would resolve in time. After realizing she had a serious injury on January 29th, claimant, who worked at various locations for employer, took steps to ascertain from employer/carrier to whom she should report her injury. She then took steps to obtain an appointment with her supervisor to report the injury and did so on February 28th.

In considering a challenge to the sufficiency of the evidence, we observe the provisions of Article 8308-6.34(e) that the hearing officer is the sole judge not only of the relevance and materiality of the evidence, but also of the weight and credibility it is to be given. As the trier of fact, it was for the hearing officer to resolve inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We will not substitute our judgment for that of the hearing officer where, as here, the findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865, 868 (Tex. App.-Texarkana 1989, no writ.) The findings and conclusions are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision of the hearing officer is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge