APPEAL NO. 93017

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992). On December 4, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine issues relating to whether notice of an injury which was sustained on (date of injury), had been given to the claimant's employer, by the claimant, who is the appellant in this appeal.

The hearing officer determined that the claimant had not given timely notice of the injury within 30 days, and did not have good cause for such failure.

The claimant has appealed this decision, asserting that the evidence supports notice to his supervisor within 30 days of the accident. The respondent carrier argues that the record supports the hearing officer's determination.

DECISION

After reviewing the record of the case, we affirm the determination of the hearing officer.

The claimant worked as a mechanic for the employer on (date of injury), when he stated he tripped over a raised grating in the floor of the auto bay area and injured his left elbow and knee. The claimant said he immediately told his supervisor, (Mr. R), the manager of the auto department for employer. The claimant said he mentioned it again two weeks later, and then a third time in the employer's breakroom, at a time he could not specifically recall. The claimant did not see a doctor for his injuries until April 13, 1992. He stated that he delayed so long seeing a doctor because no doctor would treat him without a claim number.

The claimant said that he had two other work-related accidents, one in (date), which resulted in no lost time from work, and another accident on (date). The claimant lost no time from work due to injury until (date). He stated that an accident report on the January accident was not filed by the employer until April 1992. The claimant stated that he had promptly reported the January accident.

There was no medical evidence put into the record by either party.

Mr. R testified that he was manager of the auto department from March 1991 until early November 1991. He denied that he knew anything about an alleged (date of injury) injury until he was contacted about it sometime in February or March of 1992, after he was working for another store. He also denied having a conversation with the claimant in the breakroom about any injury. Mr. R said that the end of the year bonus was based upon profitability; any cost of any accident, whether to a customer or employee, would come out of the department's profits and the bonus would be affected indirectly in this

way.

(Ms. B), the Training Co-ordinator for Safety and Loss Prevention, said she overheard a conversation in the employer's breakroom, between claimant and Mr. R, about an accident. She said she talked to the store manager about this and was told that a report had already been filed on that. She could not recall when she overheard this conversation, although she acknowledged it was before Mr. R left the store in November 1991, and she did not hear when the accident was supposed to have occurred. Ms. B said that she would not necessarily know about, or have a role in, every work-related injury report for the employer.

(Ms. H), the manager of the Auto Department for employer at the time of the hearing, said she was promoted to her position in November 1991 but had served as secretary in the department before that. She knew the claimant and said she believed she would have known if he was injured. In a statement, Ms. H said that claimant had a blood disease which sometimes caused him to limp. Ms. H said that the (date of injury) accident was reported to her for the first time in March 1992; her recorded statement indicates that she first heard about it in February 1992 from the claimant. Ms. H said that claimant told her that he had immediately reported the fall to Mr. R, so she called Mr. R to see if he knew anything about the incident, and Mr. R said that he did not.

Ms. H said that the claimant complained to her that he was not being assigned enough working hours to make financial ends meet, and that, when he told her that he had been injured in August, he said that the employer was going to pay.

Photographs were submitted which showed the grating sticking up. The claimant said that his daughter had taken the pictures in November 1991. They show the grating, which appears to be placed over a long drain, sticking up on the ends. Because the claimant said that he had informed his supervisor of the accident at least twice within 30 days after he fell, he did not bring forward any facts to claim that he had good cause for failure to timely notify the employer.

The employee must give notice of injury to a supervisory or management employee who works for the employer not later than 30 days after an accident occurs, or the carrier will be discharged from liability for benefits. Article 8308-5.01, 5.02. The conflicting testimony given on the issue of notice was for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality, and the weight and credibility, of the evidence at a contested case hearing. Article 8308-6.34(e).

There is sufficient evidence in the record to support the hearing officer's findings and conclusions that notice of a compensable injury was not given, and there was no good cause for such failure, and his decision is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge