APPEAL NO. 93820

This appeal arises pursuant to TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S. 8308-1.01 *et seq.*). On August 17, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing officer determined that the appellant, (AR), claimant herein, did not sustain an injury on (date of injury), did not timely report such injury to her employer, that there was no good cause for the failure to report and that her employer did not have actual notice of injury, and that any inability to work was solely caused by something other than the (date of injury) incident.

The claimant appeals and contends that she was hurt on the job as she stated. The carrier responds by citing all evidence in the record in support of the decision, and asks that it be affirmed.

DECISION

The decision of the hearing officer is affirmed.

The claimant stated that she was employed as a housekeeper for (employer) and, on (date of injury), her housekeeping cart began to fall, and she twisted her back trying to right it. The claimant stated that she told her supervisor, (Ms. B) about the accident, but did not tell her she was hurt. Claimant stated that in fact she did not hurt that day, but began to hurt within the week. The claimant continued to work, and stated that her pain grew gradually. She stated that her husband rubbed "Icy Hot" on her back for relief.

The claimant stated that she did not see a doctor until January 1993, or begin losing time from work before then. The claimant stated that her husband called in to excuse her from work on January 1, 1993. She stated that on December 31, 1992, a day she did not work, she had "almost slipped" on the sidewalk at home but did not fall or hurt herself then. Claimant said that the reason she did not report her increasing pain was that she feared she would lose her job, and she also figured that this was her responsibility.

(Mr. R), the claimant's husband, testified that he called in for her on January 1, 1993, and that he was in a hurry and running late for work, so he said the first thing he could think of. He said that he told the employer that his wife had slipped the previous day and was acting like she was sick. Mr. R said that claimant had been experiencing back pain since June, and he urged her to tell her employer and to see a doctor.

Ms. B testified and agreed that the claimant told her that her cart fell. Ms. B stated that she specifically asked claimant if she was hurt, and claimant said no. Ms. B stated that claimant never reported to her that she had been hurt.

(Mr. G) stated that he was not at the hotel on (date of injury), but that he was the manager by January 1, 1993. Mr. G stated that although claimant was not regularly scheduled to work on New Year's Day, she was asked to come in to cover. He stated that about 8:00 a.m. that morning, claimant's husband called and said she could not work

because she had slipped on the parking lot and hurt her back. Mr. G confirmed that the company does not fire injured workers who have filed workers' compensation claims, and there were, in fact, current employees who were out on workers' compensation.

Records from claimant's chiropractor indicate that she has been diagnosed with "lumbago" or with lumbar and thoracic spinal strain and sprain.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.- Amarillo 1974, no writ).

A claimant has the burden of proving that she was injured in the course and scope of her employment. Reed v. Aetna Casualty & Surety Company, 535 S.W.2d 377, 378 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to resolve, considering the demeanor of the witnesses and the record as a whole.

An employee (or someone acting on the employee's behalf) must give notice of injury within thirty days after it occurs. Section 409.001(a). Such notice must, at a minimum, inform the employer that an injury has occurred and that it is related to the job. Texas Employers' Insurance Ass'n v. Mathes, 771 S.W.2d 225, 228 (Tex. App.- El Paso 1989, writ denied). A claimant's failure to appreciate the seriousness of an injury may constitute good cause for the failure to timely report it. Travelers Insurance Co. v. Rowan, 499 S.W.2d 338 (Tex. Civ. App.- Tyler 1973, writ ref'd n.r.e.). However, this belief must be reasonably prudent under the circumstances. Here, the claimant did not assert that she felt the injury was trivial, and her husband testified that he urged her to seek further treatment or report to her employer over a period of months. Claimant's subjective belief
that she feared she would lose her job, especially when unsubstantiated by the record as it was here, was obviously unpersuasive to the hearing officer as "good cause."

The decision of the hearing officer is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Lynda H. Nesenholtz
Appeals Judge