APPEAL NO. 93871

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq*.), a contested case hearing was held in (city), Texas, on July 13, 1993, (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) sustained a compensable hip injury on (date of injury), and that a subsequent injury on July 21, 1992, was not the sole cause of the claimant's disability or need for further medical treatment and that although the claimant failed to file a claim for compensation not later than one year after the (date of injury) injury, he had good cause for the late filing. (A seemingly inconsistent conclusion of law was also rendered by the hearing officer on the timely notice matter and will be discussed in this opinion). The hearing officer also determined that the claimant has disability beginning August 19, 1992, and continuing to the date of the hearing. Appellant (carrier) appeals urging that the great weight and preponderance of the evidence is contrary to the hearing officer's decision and specifically argues that the claim was not timely filed and that there was no good cause for the failure and that the claimant's disability is solely the result of the subsequent injury. Claimant urges that there is sufficient evidence to support the decision of the hearing officer and asks that it be affirmed.

DECISION

Finding the evidence sufficient to support the appealed determinations of the hearing officer, the decision is affirmed.

The evidence in the case is set forth adequately in the Decision and Order of the hearing officer and is only briefly summarized here. Not in dispute is the fact that the claimant sustained a work-related injury to his hip on (date of injury), when his left leg sank deeply into a muddy ditch. He felt immediate pain but believing it to be a matter of a pulled muscle, continued working. He informed his supervisor and when he was still limping two weeks later, the supervisor took him to a doctor. There was a diagnosis of possible stress fracture in the hip joint. The claimant saw his family doctor who initially thought it was a pulled muscle. Because the claimant continued to experience pain in the hip doing his job, he quit on June 4, 1992, to seek easier work that would not cause him so much pain. Because of his hip condition, he was only successful in obtaining some part-time work over the ensuing months. On July 21, 1992, he attempted to help others pull a tree stump when his leg slipped and extended and he felt pain in his hip area. After examination by several doctors, it was determined that he had aseptic necroses of the hip, and in the opinion of two of the doctors, one of whom, (Dr. S), was an orthopedic specialist who examined him, and the other, a doctor of chiropracty, who was a treating doctor, believed that the cause of the hip injury related to the injury of (date of injury), and not the July 21st incident. The claimant was referred to Dr. S on August 19, 1992 and Dr. S advised the claimant to remain off-work pending treatment. There was evidence that the claimant continued to have difficulty with his hip and was placed on crutches. The medical records suggest the claimant may ultimately have to have hip replacement surgery. The claimant testified that he was not able to find employment because of his hip injury.

The claimant testified that he was not aware that he had to file a claim with the workers' compensation commission, that he had been assured by his supervisor that he, the supervisor, had taken care of all the filing and procedures with "workman's compensation" that needed to be done, and that he, the claimant, had been called and interviewed by the insurance carrier concerning his injury and was told they would get back with him on the matter. He stated that when they didn't get back to him he called them and was told by the agent that "this has got to go before the board, but [the agent] really don't think you'll be getting anything from us." Later, he got a letter saying they had turned down his claim. The claimant testified that he thought "that was it" until he got a letter dated March 31, 1993 from the Texas Workers' Compensation Commission on April 2, 1993, (original injury was (date of injury)) saying he had to file within a year. He said he filled out the form and he and his wife drove to the Commission office in (city) the same day and filed the form. (The form bears a receipt date by the Commission of April 6, 1993.) The claimant also testified that his wife had a conversation with the supervisor's wife sometime in February 1993 and that the supervisor's wife was surprised to learn the claimant was not getting workers' compensation and stated that the claimant was supposed to be getting it. The claimant subsequently talked to the supervisor who stated that he was under the impression that the claimant was getting a check from workers' compensation and that he, the supervisor, would get started on it and would take care of it. The claimant's testimony indicated that the insurance company paid some of the medical bills and the employer paid some.

We find that there is sufficient evidence to support the challenged findings of good cause for the claimant's failing to timely file his notice of claim with the Commission and that the claimant has disability which began on August 19, 1992 and continues. The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Section 410.165(a) Only were we to find that his essential findings and conclusion were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound basis to disturb his decision. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Regarding the untimely filing, the claimant did state that one of the reasons he did not file was because he was not aware of the requirements of the Texas Workers' Compensation Act. As carrier points out, this standing alone would not amount to good cause and we have so held. *See* Texas Workers' Compensation Commission Appeal No. 92657, decided January 15, 1993; Texas Workers' Compensation Commission Appeal No. 93139, decided April 18, 1993. However, the claimant in essence testified, and was obviously believed by the hearing officer, that his employer had assured him that everything had been done and was being done to take care of his workers' compensation claim. Indeed, his testimony was also to the effect that he had several discussions with, and was led to believe by, the carrier's agent that his claim was being adjudicated by them, albeit ultimately with unsatisfactory results. There was also evidence that the carrier paid some of the medical bills. We do not find it, as apparently the hearing officer did not, unreasonable for the claimant to rely on this information and these circumstances in concluding all requirements for a claim for his injury had been met. He took immediate action when he received the belated advice from the

Commission and realized something more was required. In affirming the hearing officer's conclusion that good cause was established under the circumstances, we find the case of Continental Casualty Company v. Cook, 515 S.W.2d 261 (Tex. 1974) particularly persuasive. In remanding that case, the Texas Supreme Court said:

> However, in the record there is some evidence of other grounds (other than belief of triviality of injury) possibly sufficient to show good cause. For example, (claimant) testified that all his medical bills for the back operation were paid by the employer or its compensation carrier, and that he received compensation during his recuperation period. In addition, he testified that the employer told him that all the requirements for filing a claim had been fulfilled. If proved, these assertions could constitute good cause for the late filing.

The hearing officer's sixth conclusion which reads

> The Employer's report of injury required under Article 8308-5.05 (now § 409.005 of the Act) was not filed with the Commission until after February 26, 1993, and therefore the limitation of one year to file a claim for compensation did not begin to run against the Claimant until after February 26, 1993. Accordingly, Claimant's Notice of Injury and Claim for Compensation (TWCC-41) filed on April 6, 1993, was timely filed.

seems to be in conflict with his other conclusions which state that the claim was not timely filed but that there was good cause for such failure. Under the circumstances we disregard it since it is not necessary for our disposition of this case. This is particularly so since the findings of fact upon which this conclusion rests have no evidentiary support in the record. In this regard, there are exhibits which show that the employer prepared an Employer's First Report of Injury and an Employer's Supplemental Report of Injury on "(date)" and February 26, 1993, respectively. However, we do not find any evidence, stipulation, official notice or other matter in the record that supports any findings of fact regarding when and with whom any required reports were or were not filed. This was not a matter addressed by the parties at the hearing. As stated above, this conclusion is not necessary for our disposition of the case and we disregard it for purposes of this decision. However, since the decision of the hearing officer is sustainable on the basis set forth, we may appropriately affirm. Burnett v. Motyka, 610 S.W.2d 735 (Tex. 1980); Texas Workers' Compensation Commission Appeal No. 93794, decided October 20, 1993.

The decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge