APPEAL NO. 93891

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly V.A.C.S., Article 8308-1.01 *et seq*.). On September 1, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) was not injured in the course and scope of employment on or about (date of injury), did not give notice within 30 days thereof, and did not file a claim until (date), without good cause for untimely filing. Claimant asserts that he was injured and did tell his supervisors of the injury that day, but he does not dispute the finding and conclusions that he failed to file a claim until (date), over one year after the stated injury, without showing good cause for his lateness in filing.

DECISION

We affirm.

At the hearing the parties agreed that the issues were: (1) whether claimant was injured on the job on or about (date of injury); (2) whether timely notice was given to the employer; and (3) whether claimant filed a claim within one year of the date of alleged injury.

Section 410.204 (a) of the 1989 Act states that the Appeals Panel "shall issue a decision that determines each issue on which review was requested."

Claimant asserts that he was injured "on or about (date)." He states that the same day he told both (RF) and (DC). He also states that he told the Texas Employment Commission, U.S. Equal Employment Opportunity Commission, Texas Commission on Human Rights, Social Security Administration, Texas Rehabilitation Commission,(Dr. G) and (Dr. H).

The appeals panel determines:

That the findings of fact and conclusions of law in regard to whether an injury occurred and whether notice was given within 30 days of the alleged injury to the employer were sufficiently supported by the evidence.

That claimant did not appeal the conclusions of law that he did not file a claim within one year of the alleged injury and did not have good cause for failure to meet that time limitation.

Claimant began work for (employer) on July 1, 1991. He states that he injured his hip, back, shoulders and neck on or about (date of injury), when he had some boxes on a two wheel dolly; the boxes started to fall off, and he held the dolly and tried to catch or steady the boxes at the same time. He added that he felt his left hip pop, but kept working. He testified that he told his supervisor the same day. Claimant then described other problems and actions he had with the employer in stating that he was waiting for completion of an investigation by the Department of Human Rights in order to file a claim; he also said that

he thought the company would "fill it out." He acknowledged that he had significant problems with his hip prior to working for employer. Much of the hearing dealt with claimant's prior history of a hip problem, what he did or did not state about that condition when he applied for work, and ancillary actions in which claimant and employer were at odds.

DC testified that he was the plant manager, describing the plant as an industrial laundry. Claimant sorted worn apparel. DC testified that claimant did not tell him of any accident. He described the procedures employer has for handling reports of both very minor injuries and those more serious. He got no report of any injury to claimant from anyone between (date of injury) and February 1993. Carrier also provided the statement of RF, who said that he is the maintenance engineer for employer. He was one of the people who supervised claimant. Claimant never told him that claimant had been hurt on the job, and no one else reported an injury to claimant to him. A statement of (SR) indicated that she worked for employer as Order Room Supervisor. Claimant was also under her supervision. Claimant did not report an injury to her.

The medical records offered by claimant are very limited. While he referred to a no records from that doctor were offered at the hearing. Two pages of records of (Dr. K) from 1976 were offered and admitted into evidence which show that claimant had "failed cup arthroplasty, left hip . . . ." The only other medical record is a letter dated March 27, 1992, by Dr. H to Texas Rehabilitation Commission. In that letter Dr. H described claimant as having low back and left hip pain. He referred to an accidental fall from a roof in 1963 in which claimant hurt his hip. He referred to a motorcycle accident in 1971, which caused hip surgery. He also referred to a 1979 surgery of the hip because of contracture, in which some hip flexors were severed. Dr. H, after noting those events, noted no injury in 1991.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He does not have to accept the testimony of claimant as an interested party. *See* <u>Presley v. Royal Indem. Ins. Co.</u>, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). He may view that testimony as only raising fact issues for him as fact finder to determine. *See* <u>Burelsmith v. Liberty Mut. Ins. Co.</u>, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). The hearing officer could give more weight to the testimony of DC and the statements of RF and SR that claimant did not report an injury than he did to claimant's statement that he told his supervisor. In regard to the issue of whether an injury occurred, the hearing officer could consider that the claimant continued to work for approximately two more weeks thereafter until he left employment for other reasons. He could also observe that claimant did not provide any record of medical care dated earlier than 1992 and that record, of Dr. H, failed to refer to any injury in 1991, notwithstanding that it referenced other injuries by date. The hearing officer could infer from such medical record that claimant was not injured as he alleged. *See* <u>TEIA v. Smith</u>, 592 S.W.2d 10 (Tex. Civ. App.-Texarkana 1979, no writ).

The evidence of record provided sufficient support for the findings of fact and conclusions of law that claimant did not sustain an injury on or about (date of injury), while

working for employer and that claimant did not give timely notice of an injury to his employer. As stated, the claimant did not appeal the conclusions of law that his claim was not filed within one year (*See* Section 409.003 which requires a claim be filed within one year of injury) and that he did not establish good cause for his late filing. (*See* Section 409.004 which relieves the carrier if a claim is not timely filed unless good cause is shown for failure to file timely.) Since the claimant did not file a general appeal but specifically contested the issues of injury and notice to the employer, the issue of the claim's timeliness will not be reviewed because claimant did not contest that determination. *See* Section 410.204(a) which requires the appeals panel to determine each issue on which review was requested.

The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge