APPEAL NO. 93969

This appeal is considered in accordance with the Texas Workers' Compensation Act (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly V.A.C.S., Article 8308-1.01 *et seq*.). On August 20, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine whether claimant was injured on (date of injury), in the course and scope of his employment with (employer) and whether he filed a claim within one year of the date of injury or had good cause for the failure to do so. The record was held open until October 7, 1993, for the filing of additional briefs.

The hearing officer determined that claimant was injured on (date of injury), through aggravation of his prior work-related injury, but that he had not filed a claim for compensation within a year and did not have good cause for failure to do so. The carrier was discharged of liability for the claim.

The claimant appealed, urging that because the employer did not file a report of injury, and because he missed over a day of work, that the limitations on filing a claim has been tolled, pursuant to the Texas Workers' Compensation Act (1989 Act), TEX. REV. CIV. STAT. ANN., Article 8308-5.06 (now recodified as TEX. LAB. CODE ANN. § 409.008). The claimant also argues that the employer had actual knowledge of the injury and he assumed that the employer would act, and that if it had, claimant would have received proper information about his responsibilities from the Texas Workers' Compensation Commission (Commission). Claimant argues that his good cause for not filing continued up to the date that he filed his claim. The carrier responds that tolling was not in issue at the hearing, and that the hearing officer's decision was correct. Carrier argues that the claimant failed to state the relief he wants, as required by the rules and statutes. Carrier did not file a timely cross-appeal on the hearing officer's determination that a compensable injury occurred on (date of injury), but notes as part of its response that it does not agree with those findings and conclusions and asks for review of the same.

DECISION

After considering the record in light of the points of error timely raised by the claimant, we affirm the hearing officer's decision.

The point of appeal raised by the carrier in its response was not filed within fifteen days of receipt of the hearings decision and therefore cannot be considered. Texas Workers' Compensation Commission Appeal No. 92141, decided May 21, 1992. Nor do we agree that our jurisdiction is lost when a party who obviously seeks review of a decision does not specifically ask for reversal and/or remand.

On (date of injury), the claimant reported that he fell along with a platform onto some equipment, a distance of six to seven feet. A sworn transcript from a coworker, who was not a supervisor, corroborated the fact of the fall. This coworker said that claimant did not say he was injured or appear to have been hurt.

The claimant, who was himself a supervisor, stated that he told his own supervisor, (Mr. R), about the fall that day. He said that he completed an accident report that was supplied by Mr. R. A sworn statement from Mr. R stated that claimant mentioned in a casual conversation, the date of which he could not recall, that he had fallen, but did not state that he had been hurt. Mr. R stated that claimant continued to work with no observed problem. Mr. R stated that he did not fill out an accident report because the fall was mentioned in a casual conversation during which claimant did not state that he had been injured. He stated that claimant did not request him to report the incident. Mr. R was no longer employed by the employer when the statement was given in April 1993.

Claimant said that the safety and employee relations manager, (Mr. B), showed up later that same day to speak with him about the fall. The claimant said that he told Mr. B that he did not think he had broken anything, but that he would check it out with his doctor, (Dr. W), who had been treating him for a compensable back injury sustained while working for the same employer in 1982. He said that Mr. B responded that this would be fine. A sworn transcript of an interview with Mr. B in May 1993 states that claimant, as a supervisor, would have received instruction in the proper handling of workers' compensation injuries. Mr. B denied that he spoke with claimant on the afternoon of the alleged date of injury. He stated that no one reported any accident that occurred involving claimant nor did claimant miss work, to his knowledge. He stated that he looked through the employer's log book and had not discovered any report of a "medical only" claim on the alleged incident.

The claimant stated (and his earlier claim settlement shows) that he had "open" medical on his 1982 injury for ten years and had been regularly treated by Dr. W for that injury since it occurred, with his most recent visit being about two weeks before (date of injury). Claimant said he left work about 1:30-2:00 p.m. that day and went to a physical therapy clinic where his wife worked. Claimant said he stayed home the next day, but then reported for work thereafter on scheduled days until he left the employment at the end of May 1991 to go into business for himself. Claimant confirmed that he had no more contact with the company. Claimant stated that he was treated by Dr. W after (date of injury), and so far as he knows, these services were paid. He stated that Dr. W opened a new file on his case when he consulted with him right after the reinjury, but that his office cannot locate this file.

Claimant stated that approximately November 28, 1992, Dr. W's office informed him that he would no longer be covered medically. The record indicated that he received a letter from the carrier that the open medical benefits on his 1982 injury were closed and the carrier would no longer be responsible. He stated that this was the first time he became aware that the employer had not done paperwork on his 1991 claim, and he thereafter called the carrier to straighten things out. Claimant confirmed that he first filed a written claim for compensation with the Commission, at the (city) field office, on January 23, 1993. Claimant stated that he did not know that he had to file a claim within one year.

Claimant maintained that he sustained a new injury to his hip on (date of injury), and that this was his most persistent claim by the date of the hearing. He also confirmed that

after his fall, his whole back hurt. There are no entries in Dr. W's medical notes that mention any 1991 work-related injury until sometime in December 1992. A consulting doctor for the carrier, (Dr. P), did not examine the claimant but reviewed his medical records and opined that there was no evidence of a reinjury occurring in (month year). A similar opinion was rendered by another consultant for the carrier, (Dr. WI).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We find no basis to reverse the hearing officer's determination that claimant did not demonstrate good cause for failure to file a timely claim. Ignorance of the requirements of the law is not in and of itself good cause for belatedly filing a claim. Lee v. Houston Fire & Casualty Insurance Co., 530 S.W.2d 294 (Tex. 1975). There was disputed testimony as to whether claimant filed a report of injury with the employer, and the hearing officer evidently believed that neither Mr. R nor Mr. B had been told that claimant had been injured in his fall. Claimant's recited statement to Mr. B, that he did not believe that he had broken anything, and would follow up with his doctor, in the absence of any evidence that he reported back to Mr. B, is at best equivocal in putting the employer on notice of an injury that would trigger any actual knowledge or any duty to file a report of injury. All in all, the hearing officer evidently believed that claimant did not have a reasonable basis for his assumption that the employer would act on his behalf to preserve his claim.

At a minimum, notice of injury should 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). While we agree that provisions as to notice, filing of claims, and exceptions thereto should be broadly construed, Texas Workers' Compensation Commission Appeal No. 92661, decided January 28, 1993, this does not mean that a hearing officer is in every case required to find that a discussion about an incident equates to notice of an injury.

We note that "actual knowledge" on the part of an employer is not listed as a defense to failure to timely file a claim. *See* Section 409.004; Texas Workers' Compensation Commission Appeal No. 93611, decided August 25, 1993. Actual knowledge would be pertinent in the case of a late-filed claim only as to the tolling provision[1], because the tolling statute applies against an employer (and its carrier) which has knowledge of the injury yet fails to file an employer's report of injury if one is required. *See* Section 409.008.

[1]The tolling provisions would not apply where the employer is not required to file a report of injury with the Commission, as when a claimant does not miss a day of work due to the injury. *See* Lowe v. Pacific Employer's Indemnity Co., 559 S.W.2d 370 (Tex. Civ. App.-Dallas 1977, writ ref'd n.r.e.); *also* Texas Workers' Compensation Commission Appeal No. 93611, decided August 25, 1993. There was disputed evidence here as to whether the employer understood that claimant missed a day of work due to the injury, or whether he missed more than one day at all.

As to whether the tolling provision was raised as an issue and was before the hearing officer, claimant raised the matter at the hearing (although the carrier complained) and evidence exists in the record as to the date an employer's report of injury was filed. We have held that the 30-day notice provision necessarily includes issues relating to defenses against a charge of untimely notice. *See* Texas Workers' Compensation Commission Appeal No. 92386, decided September 8, 1992. We believe the same is true of the claim filing provision, where untimely filing of a claim is asserted, and where the tolling provisions are argued to the hearing officer. Although the hearing officer made no express findings on tolling, his findings and conclusions that claimant's claim was filed untimely and he did not demonstrate good cause necessarily imply findings that the hearing officer held the tolling provisions to be inapplicable under these facts.

We affirm the determination of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge