

APPEAL 93988

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S. art 8308-1.01 *et seq.*), a contested case hearing was held in (city), Texas, on September 27, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) sustained a back injury in the course and scope of his employment, but that he failed, without good cause, to timely notify his employer and that he therefore did not have disability. Claimant appeals urging that he did timely notify his supervisor of his injury and attaches copies of several exhibits that were admitted at the hearing. No response was filed.

DECISION

Finding the evidence sufficient to support the finding and conclusion of the hearing officer concerning failure to give timely notice, the decision is affirmed.

Succinctly, the claimant states that he sustained a compensable injury on (date of injury), when he was lifting a pipe and felt "real weak in my lower back when I picked up that pipe, but it didn't hurt." He worked the remainder of the shift and when his work shift started again in four days he went back to work and indicated that his back "didn't hurt at all." He continued working up to March 15, 1993, when he told his supervisor that his back was hurting him and he was going to see a doctor. That was the last time he worked. The claimant testified that he mentioned the (Date) incident to his supervisor that same day when he told him "R when I lifted up on that pipe I felt real weak in my lower back and my back just gave away like I lost strength in my lower back, but it didn't hurt." He claims he mentioned the matter a couple of other times before March 15th. The supervisor was called as a witness and stated the first he knew of or that any injury was mentioned to him by the claimant was on March 15th. He testified he took injuries seriously and would have made up a report immediately if one was reported. The claimant acknowledged that he had a previous workers' compensation claim and was familiar with the need to report an injury. Although he urges that he did timely notify his supervisor, he stated he did not make any written report or fill out a notice of injury. The claimant did not offer evidence of good cause for failure to notify and does not assert good cause on appeal; rather, he continues to maintain he did timely notify his supervisor.

Section 409.001 requires notice of an injury be given to the employer not later than 30 days after the date an injury occurs. Failure to so notify results in relieving the employer and carrier from liability unless good cause is determined. Section 409.002(2).

Clearly, the hearing officer was faced with assessing the credibility of the claimant and the supervisor in deciding the issue of notice. As the sole judge of the relevance and materiality of the evidence as well as the weight and credibility to be given the evidence (Section 410.165(a)), the hearing officer resolves conflict and inconsistencies in the testimony and evidence and determines the facts in the case. Garza v. Commercial Insurance Company of Newark, N. J., 508 S.W.2d 701 (Tex Civ. App.-Amarillo 1974, no writ). Here, it is apparent that the hearing officer accorded greater weight and credibility to

the testimony of the supervisor on this issue. The hearing officer may believe all, part, or none of the testimony of any given witness (Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e)) and the testimony of a claimant, an interested party, only raises an issue of fact for the hearing officer. Escamilla v. Liberty Mutual Insurance Company., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Only were we to determine, which we do not in this case, that the great weight and preponderance of the evidence was so against the findings as to be clearly wrong or manifestly unjust, would there be a sound basis to disturb the decision. Texas Workers' Compensation Appeal No. 92232, decided July 20, 1992. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge