

APPEALS PANEL NO. 94009

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (formerly V.A.C.S., Section 8308-1.01 *et seq.*) (1989 Act). A hearing was held in (City), Texas, on November 24, 1993, before (hearing officer), hearing officer. The stated issues were whether the appellant, hereinafter claimant, sustained an injury to his groin, left knee, and/or back in the course and scope of his employment on or about (Date of Injury); whether the claimant reported an injury to his employer within 30 days of (Date of Injury); whether the claimant filed a claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year of the injury, or has shown good cause for failure to file; and whether claimant's diagnosis of right inguinal hernia and complaints of left knee and back pain are causally related to the alleged injury of (Date of Injury). (With regard to a fifth issue, concerning disability, both parties stipulated that claimant has been able to obtain and retain employment at his pre-injury wage at all times since (Date of Injury).)

The claimant appeals the hearing officer's determination that he did not suffer an injury that arose out of and in the course and scope of his employment on (Date of Injury), that he failed to give timely notice of an (Date of Injury), injury, and that he failed to file a claim within one year without good cause. The respondent, hereinafter carrier, contends that the hearing officer's decision should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

The claimant, who was employed as a security guard by (employer), testified that on (Date of Injury), while doing his early morning rounds of employer's premises, he slipped and fell after jumping over a puddle of water, hurting his left knee and groin. Later that same day, after experiencing some stiffening, he said he filled out and signed employer's initial report of injury form. The original of the form was placed on (Mr. P) desk, and claimant said a copy was put in the filing cabinet in the security station. The claimant said that Mr. P was a supervisor in a different department, although not claimant's supervisor, and that he was not present when claimant put the form on his desk. Claimant said he did not report the injury to his own supervisor, (Mr. O), nor did he discuss the injury or the form with Mr. P until much later.

Claimant said he noticed an enlargement in his groin about six to seven weeks later and began having trouble walking in May of 1992 following an employer-sponsored golf outing. However, he did not see a doctor until 16 months after the incident, and he did not talk to Mr. P about his injury or the notice form until May of 1993, when he said he "made an inquiry" because he wanted to make a claim due to his increased pain and discomfort. When he found Mr. P did not have claimant's notice form, claimant located a copy which he gave to Mr. O. On June 29, 1993, employer filed an Employer's First Report of Injury or Illness (Form TWCC-1), giving the date the injury was reported as June 16, 1993. Claimant's Exhibit No. 1, the copy of the notice form he prepared, was date stamped as

received on June 16, 1993. Claimant's Employee's Notice of Injury or Occupational Disease and Claim for Compensation (Form TWCC-41) was filed on July 20, 1993.

On August 24, 1993, claimant saw (Dr. R), who stated that claimant's examination revealed a right inguinal hernia that did not require immediate attention but should be repaired. At the hearing the claimant contended he has also experienced back and knee problems, but that Dr. R did not diagnose either of those complaints.

Mr. P, who described himself as "middle management," testified that he did not recall claimant telling him about any injury or seeing claimant's notice form; he said these forms were kept in all the buildings. (Mr. F), employer's facilities manager, testified that he did not hear of claimant's injury until the day before the October 13, 1993, benefit review conference.

In his appeal, the claimant challenges the following findings of fact:

FINDINGS OF FACT

- 6.The written notice of injury that claimant placed on a supervisor's desk was never found by employer, and employer did not receive notice of the (Date of Injury) incident until June, 1993.
- 7.Claimant did not establish that the right inguinal hernia diagnosed in August, 1993 and his left knee and back pain were causally related to the (Date of Injury) work related injury.
- 8.Claimant did not act as a reasonable, prudent person in failing to confirm that employer received his written notice of the (Date of Injury) incident until May, 1993.
- 9.Claimant did not act as a reasonable, prudent person in failing to file a claim for an (Date of Injury) injury with the Texas Workers' Compensation Commission until July 20, 1993.

The 1989 Act provides that the hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). As such, the hearing officer as fact finder may believe all or part or none of the testimony of any one witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). We may not substitute our judgment for that of the hearing officer where his or her decision is based upon sufficient evidence and is not so against the great weight and preponderance of the evidence as to be manifestly unjust. In Re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Upon our review of the evidence in this case, we do not find grounds exist to overturn the hearing officer's decision.

Claimant challenges one additional finding of fact, which states that claimant fell while jumping over a puddle on (Date of Injury). We agree that this incorrectly states the date of claimant's alleged injury, and we modify this date as "(Date of Injury)."

The decision and order of the hearing officer are affirmed.

Lynda H. Neseholtz
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge