

APPEALS PANEL NO. 94019
FILED FEBRUARY 11, 1994

On November 19, 1993, a contested case hearing was held in (City), Texas, with _____ presiding as the hearing officer. The hearing was held under the provisions of 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.*). The issues at the hearing were: (1) whether the appellant (claimant) sustained a compensable injury while in the course and scope of his employment on or about (date of injury); (2) whether the claimant timely reported his claimed injury to his employer; (3) whether the claimant timely filed his claim for compensation with the Texas Workers' Compensation Commission (Commission); and (4) whether the claimant has disability. The hearing officer found against the claimant on all issues and decided that the claimant is not entitled to workers' compensation benefits. The claimant disagrees with the hearing officer's decision. The respondent (carrier) responds that the decision is supported by the evidence.

DECISION

We affirm the decision and order of the hearing officer.

The claimant testified that he was hired by the employer, (Employer) on March 27, 1992. He said that on (date of injury), his supervisor, (CL), was driving him to a job site when the brakes failed on the supervisor's truck, the truck jumped a curb, and he hit his head on the ceiling of the truck. He said he and his supervisor continued to the job site and worked that day and the next couple of days. The claimant said that he had some soreness in his neck on (two days after date of injury), when he was terminated for reasons he said were unrelated to his injury, but he said he did not inform his supervisor or employer of any injury or soreness when he was terminated. The claimant testified that he started to have stiffness in his neck and headaches five or six months after (date of injury), but that he did not seek any medical treatment until July 1993 when he talked to a chiropractor who told him to see a medical doctor. The claimant said he went to the chiropractor because he had stiffness in his neck.

The claimant further testified that after seeing the chiropractor he reported to (SP), the employer's benefits administrator, in July 1993 that he had been injured at work. The claimant also said that he went to a hospital on November 3, 1993, where he said he was told he had stress and was prescribed Motrin for pain. The claimant filed a claim for compensation with the Commission on or about July 19, 1993. The claimant said that he was unaware of reporting and claim filing time limits until he contacted the Commission after he talked to the chiropractor in July 1993. The claimant said he has applied for other jobs since his termination but has not been successful in getting employment other than doing "odd jobs." The claimant also indicated that he did not know his claimed injury was serious until after he talked to the chiropractor. The only medical document in evidence was a record from the hospital dated November 3, 1993, which reported that the doctor suspected that the claimant suffered from tension headaches, prescribed cervical muscle stretches three times a day, and also prescribed Motrin. The hospital record did not

mention the accident described by the claimant.

CL, the claimant's supervisor, stated in a recorded statement that he did not recall any incident as described by the claimant as having occurred when the claimant was employed. CL stated that he did have brake trouble about eight months before he gave the October 1993 statement, which would mean that his brake trouble occurred about February or March of 1993, long after the claimant had been terminated.

SP, the employer's benefits administrator, stated in a letter dated July 16, 1993, that the claimant first reported an alleged injury to the employer on July 16, 1993, and in another letter stated that the claimant reported that the injury occurred around (month) (year). She also stated that CL had told her that he recalled an incident when his brakes failed while on duty, that he did not think anyone was with him at the time, and that he immediately had the brakes repaired for which he had a receipt dated August 22, 1992.

The claimant has the burden to prove that he was injured in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App. - Texarkana 1961, no writ). The claimant also has the burden to show that he timely reported his injury to his employer. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App. - El Paso 1965, no writ). Section 409.001(a) provides that for injuries other than occupational diseases, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the injury occurs. A claimant that fails to give timely notice of injury to his employer has the burden to show good cause for such failure. Aetna Casualty & Surety Company v. Brown, 463 S.W.2d 473 (Tex. Civ. App. - Fort Worth 1971, writ ref'd n.r.e.). Section 409.003 provides that for injuries other than occupational diseases, a claim for compensation shall be filed with the Commission not later than one year after the date on which the injury occurred. Good cause for delay in giving notice of injury or in filing a claim for compensation is ordinarily a fact question to be determined by the finder of fact. Brown, *supra*. However, Texas courts have consistently held that an employee's ignorance of provisions of the workers' compensation law does not constitute good cause to excuse late notice of injury to the employer or late filing of a claim for compensation. Applegate v. Home Indemnity Company, 705 S.W.2d 157 (Tex. App. - Texarkana 1985, writ disp'd). The hearing officer is the judge of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts and contradictions in the evidence, it is the duty of the finder of fact, in this case the hearing officer, to consider the conflicts and contradictions and determine what facts have been established. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App. - San Antonio 1964, writ ref'd n.r.e.).

Having reviewed that record, we conclude that the hearing officer's findings of no injury in the course and scope of employment, no disability, late reporting of the claimed injury to the employer without good cause, and late filing of a claim for compensation without good cause are sufficiently supported by the evidence and are not against the great weight and preponderance of the evidence. Johnson, *supra*; Griffin v. New York

Underwriters Insurance Company, 594 S.W.2d 212 (Tex. Civ. App. - Waco 1980, no writ). The claimant's statement that he was not sure if he could ask questions at the hearing provides no basis for disturbing the decision of the hearing officer. The claimant was assisted by an ombudsman at the hearing at the claimant's request. There were no witnesses at the hearing for the claimant to question other than himself and his testimony was elicited by the ombudsman, the carrier's attorney, and the hearing officer who gave the claimant ample opportunity to present his case and explain his answers to questions.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge