APPEAL NO. 94033
FILED FEBRUARY 15, 1994

This appeal is considered in accordance with 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.). On November 4, 1993, a contested case hearing was held in (City), Texas, with (Hearing Officer) presiding. The issues to be determined were whether the claimant, (Claimant), who is the appellant, was injured on (date of injury); whether he notified his employer, (employer), about his injury within 30 days; and whether he filed a claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year after his injury.

The hearing officer determined that the claimant was injured and had timely reported the injury to his employer, but he did not file a claim for compensation within a year and did not have good cause for the failure to do so. The carrier was discharged from liability for the claim due to the failure to file a claim.

The claimant has appealed the decision. He argues that he was not English speaking and had no knowledge that he was supposed to file a claim within a year. He further argues that posted notices around the work place about workers' compensation were in English only. Claimant therefore asserts that he had good cause for failure to file. The carrier responds by noting that it disputed that timely notice was given and that the first the employer knew about the alleged injury was when it received notice that a claim had been filed, well over a year after (date of injury). The carrier asks that the decision be affirmed.

DECISION

We affirm the hearing officer's decision.

The claimant maintained that he was hurt when he went to pick up three or four bags of clamps that weighed 90 pounds a bag. He said that he asked his nephew, (Mr. B), to help him but that his supervisor on site, (Mr. S), told him he had to do this alone. The claimant stated that he told Mr. S about his injury. When asked on cross-examination if he told Mr. S that he hurt his back at work, claimant responded, "I think so." The claimant continued to work until the particular job that he was working on ended, at which point he was laid off. He did not testify as to the date this occurred.

Claimant said that his back continued to hurt after (date of injury), and he sought treatment at a hospital emergency room at an unspecified time. He later went to see (Dr. W) after his Medicaid coverage was approved. According to Dr. W's notes, claimant first consulted with him on March 2, 1992, for lumbar area pain. The notes indicate he did not show up for two other March appointments, but next saw Dr. W for continued back pain on August 4, 1992, did not show up for a September 1992 appointment, and then saw Dr. W again on March 15, 1993 (and various times thereafter). Claimant eventually was referred to (Dr. C). According to a November 3, 1993, letter from Dr. C, claimant was diagnosed

with a traumatic spondylolisthesis with radiculopathy to the 5th lumbar nerve root on the left side, and that he will need surgery in order to return him to the work force.

Claimant testified that he was told by an American acquaintance that he could file for workers' compensation, and came to the Commission within a year. However, the record indicated that he first filed a claim on April 7, 1993. Although the claimant agreed that at least two relatives had been hurt on the job, he was not aware of any of the particulars of their injuries and whether they received workers' compensation. He said that he reported his injury to Mr. S because he felt he had a duty to do so. He stated that Mr. S spoke some Spanish but not very well.

Mr. B testified that he was asked by claimant on (date of injury), to help move some sacks, and that when he began to assist, Mr. S came over and told him to do what he had been assigned to do. Mr. B indicated that at this point he overheard claimant tell Mr. S that his back hurt, and that claimant attempted to do so in English.

(Mr. SB), a superintendent for the employer, testified that he did not believe that (date of injury), was a work day for claimant's crew because it was Sunday. He stated that to his knowledge, claimant worked until he was laid off on February 5, 1992, because the work project was at an end, and he did not miss time from (date of injury), through that date. He said that Mr. S had been laid off also when the project was completed.

Mr. S stated that his crew was involved in concrete finishing work. He stated that on occasion there would be communication difficulties with claimant because he spoke very little Spanish, but there were others available to assist in communications. Mr. S stated that he would tape reports of injury (and did so when claimant's nephew, Mr. B, reported an injury), and that the employer took reports of injury seriously, to the extent that he could have been fired for failing to file a report about a work-related injury. He said there were no adverse consequences against supervisors who filed injury reports. He stated that the nephew's injury was considered minor and for this reason workers' compensation was not paid (although the nephew took a few days off with full salary).

Mr. S said that claimant never, from (date of injury) through the date he was laid off, reported that he hurt his back on the job. Mr. S said that notices were posted by the employer in Spanish and English about workers' compensation coverage in a location where the workers could not miss it.

Section 409.003 requires that the injured employee file a claim for compensation with the Commission not later than one year after the date the injury occurred, or the carrier may be discharged from liability for the claim. Section 409.004. Section 409.004(1) provides that a carrier will not be discharged if a claimant has good cause for not timely filing a claim. (Because claimant did not miss time from work, according to the record, the tolling provision under Section 409.008 does not appear to apply because the employer would not have been required to file a report of injury under Section 409.005.)

Good cause is acting the way an ordinarily prudent person would under the same or similar circumstances. Hawkins v. Safety Casualty Co., 207 S.W.2d 370 (Tex. 1948). Notice to an employer does not excuse a claimant from also filing a claim with the Commission. *See* Camarillo v. Highland Underwriters' Insurance Co., 625 S.W.2d 11 (Tex. App.-Beaumont 1981, no writ). In this case, the claimant sought medical treatment for his injury several times within the one year period, and stated that it hurt him after (date of injury). Moreover, claimant does not really argue that he did not understand his injury was serious, but that he was unaware of his rights to compensation. This is essentially an argument that he was ignorant of the law, which generally is insufficient to establish the existence of good cause. Lee v. Houston Fire & Casualty Insurance Co., 530 S.W.2d 194 (Tex. 1975). As stated in Texas Workers' Compensation Commission Appeal No. 93611, decided August 25, 1993, the fact that an employer may not inform employees about the requirements of the law will not excuse an injured worker from timely filing a claim. In any case, the hearing officer here could well have believed that the claimant essentially was put on notice through posted notices in Spanish.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). 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 affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge