

APPEAL NO. 94220

This appeal arises under the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 7, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant's (claimant) condition was not caused by her work, that she did not timely notify her employer of an injury, and did not have good cause for failing to timely report. Claimant asserts that she was injured on the job, had good cause for failing to report within 30 days of the injury, and has disability. Carrier replied that the decision should be upheld.

DECISION

We affirm.

Claimant worked as a sewing machine operator for (employer). She stated that she had worked as a sewing machine operator from 1974 to 1993. She complained of injury to her right leg; she used that leg to work a pedal on her sewing machine throughout each workday. In Carrier's Exhibit No. 2, claimant in a statement taken on July 27, 1993, said that (Dr. G) stated her right leg problem came from moving it on the pedal all day. Claimant also said in that statement that on (date of injury), she told (GR) that her doctor connected her leg problem to the machine at work.

At the hearing, claimant's testimony was not specific as to the injury. She described sewing "jeans," particularly the pockets of "jeans." She mentioned that her machine has pedals, but she did not describe use of a pedal as constant or state approximately how many times a day she estimated she used her right leg to press the pedal; she did not describe how hard it was to press the pedal or whether her leg was in a restricted position when she pressed it so that her leg was stressed in an abnormal way. She did say that the employer changed the size of carts that brought material for her to sew at the end of October 1992. She said that the pain got worse from (date of injury), when she first noticed pain, until (date of injury), when she reported to GR. GR was described as being the secretary in personnel to whom injuries are reported. Claimant said, however, that she only told GR of her pain and the need to take time off from work, not that the machine caused her leg problem. Claimant added that she talked to her supervisor, (EC), in November, but only told her that she could not sew correctly because of the carts being used, not of her leg problem. Claimant did not say how she knew on (date of injury) that her pain was related to the work. Claimant also said that she did not report the injury earlier than (date of injury) because she was afraid she would lose her job, citing some employees who had been fired.

GR testified for carrier that claimant only told her she was sick because of varicose veins and needed to be off work. She said that claimant mentioned nothing of work being related to her problem or that Dr. G had advised that work was a contributing factor. GR added that claimant gave a note (presumably medical note) to her supervisor, (JL), but she did not see what it said. GR talked again to claimant at the time she was discharged--ostensibly for inability to do her job--on March 16, 1993, and stated that claimant did not report a work-related injury at that time either. Hearing Officer Exhibit No. 2 indicates that

a doctor's note dated (date of injury), shows claimant would be off work because of sciatica and peripheral vascular disease.

Dr. G's medical notes indicate that on (date of injury), claimant reported pain in her right leg. He recorded: "The patient has a sitting-down job, sewing. She uses her right foot to move the machine. However, pain originates from the foot and it goes all of the way to the back of the thigh to her lower back. She apparently is sitting down most of the day. She also has some problems with her varicose veins." Dr. G called for her to rest her leg and advised certain tests should be done. His records later reflect that she could not afford the tests.

Claimant agreed on cross-examination that the people she heard of as fired for filing workers' compensation claims were either not fired, were terminated after the period of November 1992 to February 1993, or did not have workers' compensation claims.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The claimant did not specify how she concluded that her use of the right leg on the machine's pedal caused her problem. Dr. G did not say specifically that the machine caused the problem; what the testing he advised claimant to undergo would have shown is unknown. The hearing officer's finding that the claimant did not show that her injury was caused by her work is sufficiently supported by the evidence. Similarly, claimant did not say that she connected the leg problem to the job when she talked to GR on (date of injury); her testimony as to why she delayed giving notice, fear of losing her job, did not in this case compel the hearing officer to find that she had good cause for delaying her notice. Compare this case to Texas Workers' Compensation Commission Appeal No. 91097, dated January 16, 1992, in which a sewing machine operator was found to have compensable repetitious physical trauma to her leg and back from operating her machine. In that case, claimant knew she had pain but did not know the basis thereof until she saw her doctor.

The hearing officer's determination that claimant did not have disability follows his findings that she did not show she was injured on the job. Disability is based on a compensable injury; without such injury there is no disability under the 1989 Act. See Section 401.011(16) "[d]isability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage."

Finding that the decision and order are not against the great weight and preponderance of the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge