

APPEAL NO. 94230

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), a contested case hearing was held in (city), Texas, on December 9, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) sustained a compensable back injury in the course and scope of her employment on (date of injury), that she was aware of her injury at the time it occurred, that she gave timely notice of the injury to her supervisor, that she had disability from August 1, 1992, through the date of the contested case hearing, and that she did not, without good cause, file a claim for workers' compensation within one year from the date of the injury. The claimant appeals the issue of failure, without good cause, to file a timely claim, citing that she was not aware that she had to file a claim within a year and that her main concern was with her medical condition. She also complains that the timely filing issue should not have been added because the respondent (carrier) failed to dispute the issue within 60 days. The carrier responds that the evidence is sufficient to support the hearing officer's finding and conclusion that the claimant did not, without good cause, file a timely claim. In its response, the carrier also attempts to appeal the hearing officer's findings on course and scope of employment, notice of injury, and disability.

DECISION

Finding the evidence sufficient to support the hearing officer's determination that the claimant failed, without good cause, to timely file a claim for workers' compensation benefits, we affirm his decision and order.

Initially, we note that the carrier, although timely filing a response to the claimant's appeal, did not file an appeal of the hearing officer's decision within the statutorily provided time limit of 15 days from the receipt of the hearing officer's decision. Section 410.202. Accordingly, we do not address in this decision those matters first raised as appealed issues in the response. Texas Workers' Compensation Commission Appeal No. 92109, decided (month) 4, 1992.

That the claimant had a serious back condition is not questioned. She had significant back surgery in 1971. There is some evidence to indicate she had back problems for several months before (month) (days), the date she claims she sustained the current injury when she felt a twinge in her back while in an awkward position lifting some medical supplies. In any event, she testified that she reported to her supervisor the same day that she hurt her back. Both the first and second level supervisors deny that the claimant ever reported any injury and state that they first knew of the claim for workers' compensation in August of 1993 or later. In any event, the claimant worked until the end of July 1992 when she resigned to have back surgery. An MRI on or about July 7, 1992, had indicated back surgery was necessary. The claimant underwent surgery in August 1992 and was released to work with restrictions in October 1992 by her treating doctor. According to the claimant, she has not been able to work and, although she testified he would not put it in writing, her doctor told her the injury was related to her work. The claimant filed for disability with the Social Security Administration and, while the record is

not clear as to what was transpiring in the meantime, she filed a claim for worker's compensation on July 30, 1993, and listed her date of injury as (date). On "11-7-93" she filed an amended claim for compensation listing her date of injury as "dates." Although we do not review or comment on the sufficiency of the evidence (except as to the timely filing of claim and good cause issues), the hearing officer was apparently satisfied that the claimant sustained an injury in the course and scope of her employment, timely notified her employer of her injury and had disability.

Regarding the issue on appeal, the parties agreed on the record that an issue before the hearing officer, generated by the claimant's amended claim for compensation, was "whether Claimant filed a claim for compensation within one year of her injury or her becoming aware of the injury, or have good cause for not filing her claim within one year." As indicated, the hearing officer found, and is supported by sufficient evidence, that the claimant did not timely file and did not have good cause for her failure to timely file. In her appeal, the claimant states that she was not aware that she had to file a claim within one year. This does not amount to good cause and lack of knowledge of the requirements of the law and does not excuse a failure to follow the law. See Texas Workers' Compensation Commission Appeal No. 93102, decided March 22, 1993; Texas Workers' Compensation Commission Appeal No. 93489, decided July 29, 1993. Good cause for late filing of a claim is measured by the standard of ordinary prudence. Hawkins v. Safety Casualty Company, 207 S.W.2d 370 (Tex. 1948). There was no evidence to indicate that the claimant was misled by anyone such as the employer or her health care providers nor is there evidence that she did not timely file because she thought the injury was trivial. The claimant also urges that she did not timely file because her medical condition was her main concern after the time of her injury. Aside from the evidence, which indicated she filed for Social Security benefits and that her treating doctor released her for restricted duty, there was nothing to indicate she was hampered in any way from filing a claim from November 1992 when released for restricted duty up to July 30, 1993. We find no basis to disturb the determination of no good cause under the circumstances present in this case. Allstate Insurance Co. v. King, 444 S.W.2d 602 (Tex.1969).

The claimant attempts to raise an issue for the first time on appeal that the carrier failed to dispute the issue of timely filing of the claim within the 60 days provided by Section 409.021(c). Aside from the consideration that issues first raised on appeal are not normally considered (Texas Workers' Compensation Commission Appeal 931028, decided December 23, 1993, and cases cited therein), here, the issue regarding failure to timely file a claim was not presented until November 11, 1993, when the claimant filed her amended date of injury as (days). Although it is not necessary to consider the merits of this issue first raised in the claimant's appeal, the evidence clearly shows that the carrier timely disputed this issue following the amendment date giving rise to it.

The record in this case included voluminous medical records dating back over twenty years. While it is recognized that some cases (month) give rise to the need for including extensive medical records in proving certain issues, what is disturbing to us in this case is the following passage during the carrier's presentation:

I am introducing the whole stack of the medical records but only a very small portion are relevant. With the agreement of the claimant I will just paper clip those documents which are relevant instead of making the hearing officer go through all the records.

The reams of records, mostly irrelevant, were admitted. Why this unacceptable procedure was permitted is not at all apparent. Suffice it to say that such practice should be discontinued as it is unnecessarily expensive and time consuming, and hampers and encumbers an orderly proceeding. We have previously commented on this in an unpublished decision. Texas Workers' Compensation Appeal No. 93050, decided March 5, 1993 (unpublished). See also Texas Workers' Compensation Commission Appeal No. 93032, decided February 26, 1993.

For the reasons set forth above, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge