

APPEAL NO. 950035
FILED FEBRUARY 23, 1995

This is an appeal pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 410.202(a) (1989 Act). Following a contested case hearing held on December 16, 1994, the hearing officer issued a decision which determined that the appellant (claimant) did not sustain a compensable injury on _____, did not give timely notice of the claimed injury, and did not have good cause for not timely providing such notice. Claimant has appealed the decision asserting it to be "unfair" and asking for another hearing. In its response, the respondent (carrier) maintains that the evidence is sufficient to support the findings.

DECISION

Affirmed.

Claimant testified that on _____, while operating molding machines in a plastics products plant, a forklift driver, while backing up, bumped into some boxes nearby, which, in turn, shoved the table in front of her into her stomach and pushed her back into another table behind her. She said the accident was unwitnessed but that about an hour later, her supervisor, (Mr. B), came by and she reported her injury to him. Claimant testified that Mr. B told her he could not afford to let her go to a doctor because she was needed to run the machines, that he asked if she was hurt, that she responded that she was "shook up" and asked to sit for a while "to get myself together," and that she resumed work after about ten minutes. Claimant also indicated that she had red marks on her stomach and back after the incident which later developed into bruises. She stated that she finished her shift, worked the next day, and continued to work until her employment was terminated for cause on March 25th. She immediately obtained other employment consisting of "sitting and sewing" boat upholstery. She also stated that the pain was not too bad at first and she tolerated it; however, at approximately the beginning of August the pain increased and on August 10th she needed something stronger than Advil so she went to a hospital emergency room (ER) for medical treatment. She also said she did not go to a doctor because she lacked the funds and that she has not had medical treatment since the ER visit. The history in the ER record recited that she had been pushed into a table in March and that her low back had hurt off and on. According to the record, claimant was given medication and released. The diagnosis, partially illegible, appears to be "low back strain."

Mr. B testified that although he was not seen by claimant or the forklift driver, he did witness the incident from about 50 feet away. He said the empty cardboard boxes merely "nudged" the conveyor belt and table near claimant and that the table did not contact her. He also stated that when he asked her if she was alright, claimant told him she was "fine", just scared, and that she sat down for a few minutes before resuming her work. He also

said that claimant never reported being injured in that incident at any later time nor did she ever appear to be injured. Also in evidence was the signed statement of (Mr. S), who was Mr. B's supervisor. Mr. S stated that he spoke with claimant on March 15th about the incident and that claimant told him the forklift bumped the table and it moved toward her, that it scared her, but that it did not hit her, and that she was "fine."

Having reviewed all the evidence of record, we find that it sufficiently supports the hearing officer's findings that claimant did not injure her back or sustain damage or harm to her back or any other part of her body on _____, that her statements made within 30 days of _____ were insufficient to apprise the employer of a work-related injury, and that claimant when giving notice of the injury did not act as would a reasonably prudent person in the same or similar circumstances. Claimant had the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. "Injury" is defined to mean "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). Claimant also had the burden to establish that she provided notice of her injury to her employer within 30 days or else had good cause for an untimely reporting. See Section 409.001 for the notice requirements. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer as the fact finder to resolve the conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). While a claimant's testimony alone may prove a compensable injury, such testimony only raises an issue of fact for the hearing officer to resolve. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); Burelsmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). In determining that claimant did not sustain an injury the hearing officer could credit the testimony of her supervisor and the statement of Mr. S that she said she had not been hurt, as well as the passage of nearly five months before she sought medical treatment. We are satisfied the findings are not so against the great weight and preponderance of the evidence as to be manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 150 Tex. 632, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Tommy W. Lueders
Appeals Judge