

APPEAL NO. 951457

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. 401.001 *et seq.* (1989 Act). A contested case hearing was held. The two issues before him were: (1) whether the appellant (claimant) timely reported an injury to the employer, and, if not, does good cause exist for failure to report timely, and (2) whether the claimant had disability. The hearing officer determined that the claimant did not timely report an injury to the employer, that good cause did not exist for the claimant's failure timely to notify that the employer of a work-related injury, and that the claimant has not had disability. The claimant appealed urging that the determinations of the hearing officer are so contrary to the overwhelming and great weight of the evidence as to be manifestly unjust and requesting that the Appeals Panel render a decision that the claimant timely notified the employer of the injury and that the claimant had disability from September 27, 1994, through the date of the hearing or in the alternative that the Appeals Panel reverse the decision of the hearing officer and remand for appropriate action. A response from the self-insured has not been received.

DECISION

We reverse and render.

The claimant, a fifth grade teacher, testified that she injured her back lifting a box at work on _____. She said that she told Ms. K, her lead-teacher, about the injury during the third or fourth week of August 1994. The claimant stated that she thought that Ms. K was her supervisor. Ms. K and Mr. M, the principal at the school where the claimant taught, both testified concerning the duties of Ms. K as a lead teacher for the fifth grade. The duties of a lead teacher for the self-insured in this case are similar to those set forth for a lead teacher for the same self-insured in Texas Workers' Compensation Commission Appeal No. 950282, decided April 10, 1995, and will not be repeated.

The claimant testified about a week after the injury she told Ms. S, who the claimant said is a food services specialist for the self-insured who manages food services for 22 schools for the self-insured and is a college friend, about the injury. In response to a question from the hearing officer, the claimant stated that Ms. S was not her supervisor. The claimant introduced a signed statement from Ms. S in which she states that she is an Area Specialist in the Food and Child Nutrition Department for the self-insured, that she supervises operations at up to 28 schools and supervises up to 175 employees, and that during the week of August 22, 1994, the claimant told her that she had injured her back at work during the week of _____.

The claimant said that she first saw a doctor for her injury on Saturday, August 21, 1994, and saw another doctor on about September 1, 1994. She stated that on September 27, 1994, she saw a doctor who diagnosed a back sprain or strain, and that she attempted to tell the principal about the injury on September 29, 1994, that he was not available, and that she told the principal's secretary about the injury. She said that Dr. G

was the first doctor to ask if she was still working, that she thinks that this was on October 3, 1994, and that she said that she was not working. The claimant said that she saw several doctors after that and had back surgery in April 1995. She testified that she has not worked since September 27, 1994.

Section 409.001 provides that an employee shall notify the employer or an employee of the employer who holds a supervisory or management position of an injury not later than the 30th day after the date an injury occurs. In Texas Workers' Compensation Commission Appeal No. 92694, decided February 8, 1993, Chief Judge Sanders wrote:

That he may or may not have been a supervisor of the claimant at the time is not pivotal to the finding since the 1989 Act does not require that there be a direct supervisory chain, only that the person to whom a report is made holds a supervisory or management position.

Ms. S clearly held a supervisory or management position at the time that the claimant reported the injury to her. The hearing officer's finding of fact that on or before September 7, 1994, the claimant did not tell or otherwise notify anyone holding a supervisory or management position with the employer that she claimed a work-related injury is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust and is reversed. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We render a decision that the claimant timely reported an injury to the employer.

It appears that the self-insured's position at the hearing was that since the claimant did not timely report an injury she could not have a compensable injury and therefore could not have disability. The carrier did argue that the first date the claimant could not work because of the injury was sometime in October 1994. Also, the hearing was held on a Saturday at the request of the claimant and there is some indication that the claimant had hoped to return to teaching. The hearing officer made the following finding of fact:

7. The inability of claimant to obtain and retain employment at wages equivalent to her wages prior to _____, at any time since _____, is because of something other than any injury she sustained while working for Employer.

and concluded that the claimant has not had disability at any time since _____. Whether the injury occurred in the course and scope of employment was not an issue at the hearing. The determination of the hearing officer that the claimant did not have disability is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust and is reversed. King's Estate, *supra*. We render a decision that the claimant had disability. If the parties are unable to agree on a period or periods of disability, they may use the dispute resolution process set forth in the 1989 Act to resolve

disputes concerning disability.

We reverse the decision of the hearing officer and render a decision that the claimant timely reported her injury of _____, and that the claimant sustained disability.

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge