

APPEAL NO. 980077

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 971898, decided October 30, 1997, the Appeals Panel affirmed the determination of the hearing officer that the respondent (claimant) sustained a compensable aggravation injury on _____. We reversed the determinations that the claimant gave his employer timely notice of the injury and, pending resolution of the timely notice issue, that the claimant had disability and remanded these issues for further consideration. A hearing on remand was held on December 16, 1997. He (hearing officer) reconsidered the evidence and found that the claimant gave timely notice of his injury and had continuing disability from _____. The appellant (carrier) appeals the finding of timely notice, contending that it is against the great weight of the evidence. The carrier also appeals the finding of disability to the extent that there was no compensable injury. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

Our decision in Appeal No. 971898, *supra*, contained an extensive discussion of the facts and law which need not be repeated here. The purpose of the remand of the timely notice issue was to insure that the hearing officer did not resolve this issue on the basis of information contained in the Employer's First Report of Injury or Illness (TWCC-1). In his decision and order on remand, the hearing officer determined that the claimant gave timely notice of his injury in numerous discussions with (Mr. C) and (Mr. S), both supervisors. The matter was somewhat complicated by the fact that the claimant had a prior, serious compensable injury with continuing effects, of which the employer was fully aware, and was now claiming an aggravation of this prior injury. Under these circumstances, it is understandable that a supervisor may not readily understand that a new injury is being reported or the claimant may not be reasonably clear in his assertion of a new injury. In any case, whether and, if so, when notice of an injury is given are essentially questions of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994. The hearing officer found the claimant credible and persuasive in his assertions, as recounted in our prior decision, that he told both Mr. C and Mr. S several times within 30 days of his injury that he sustained what he believed was a new injury at work on _____. In its appeal, the carrier quotes at length testimony from these individuals which, it believes, was "taken out of context and misinterpreted" by the hearing officer to support his conclusion that notice of a new injury was timely given. Rather, the carrier argues that this evidence should have been considered against the background of the prior extensive injury and, when so considered, compels the conclusion that the claimant did not adequately communicate that he was claiming a new injury. As

the claimant notes in response, the evidence was susceptible to varying inferences and conclusions. The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). In the discharge of this responsibility, he found that the claimant did give timely notice. Under our standard of review, we decline to reverse that determination. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The carrier bases its appeal of the disability determination on the lack of a compensable injury by virtue of the failure of timely notice. Having affirmed the finding of timely notice, we also affirm the finding of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge