APPEAL NO. 980230
FILED MARCH 19, 1998

Following a contested case hearing held in (City), Texas, on January 7, 1998, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that while the appellant (claimant) sustained an injury in the course and scope of her employment on _____, she did not timely report the injury to the employer within 30 days of its occurrence, that the employer did not have actual knowledge of the injury, that claimant did not have good cause for the untimely reporting of the injury, and, therefore, that claimant did not sustain a compensable injury and did not have disability. Claimant has appealed the determinations adverse to her, arguing that her evidence supported her contention that she timely provided oral notice to her supervisor and to the employer's human resources manager and therefore that her injury is compensable and she had disability. The respondent (carrier) contends in response that the evidence is sufficient to affirm the appealed findings and conclusions.

DECISION

Affirmed.

Claimant testified that on _____, she slipped on a wet floor at work and had a "near fall," injuring her neck, left arm and shoulder, and back. She indicated that in 1992 she had a previous injury to her neck and left side while working for another employer whose workers' compensation insurance was carried by another carrier. Claimant testified that on November 8, 1997, she called her supervisor, Mr. L, and told him, variously, that she had a "near fall" and "hurt all over," that she "was sick," that her "neck and arm were hurting," that she was "hurting all over and felt like she had flu-like symptoms," that she did not advise him of a specific injury, and that she had obtained an appointment with Dr. S. She said that Mr. L replied, "Ok, take care of it." Dr. S's record of November 11, 1996, diagnosed an upper respiratory infection and also mentioned neck stiffness and a past history of neck injuries. Claimant introduced an "Injury Time Lost Summary" reflecting various days and partial days off between November 11, 1996, and November 4, 1997, for reasons of "hurting," for various health care provider appointments, and several benefit review conference meetings. Claimant said she was not taken off work by the doctor and did not testify about the entries on the summary.

Claimant further testified that when she returned to work on November 15, 1996, she called Ms. H, the employer's human resources project officer, told her that she had a neck injury in 1992 while working for another employer and asked her about the paperwork and what to do, and that Ms. H said she would look into the matter and get back to her. Claimant stated that Ms. H sent her an E-Mail on January 20, 1997, with certain information, including the comment that she had placed a copy of the

Employer's First Report of Injury or Illness (TWCC-1) in claimant's mailbox. Claimant maintained that this communication established that she had indeed provided timely notice of the (day after date of injury), injury to the employer. However, Ms. H testified that this communication referred to the TWCC-1 related to claimant's 1992 injury and that the communication also bore the claim number for that injury.

Mr. L testified that while he had conversations with claimant all the time, he could not recall any particular conversation with claimant on (day after date of injury), let alone her advising him that she had a "near fall" injury on the previous day and was injured. Had she done so, he would have initiated a report. He said he was not aware that claimant was contending she sustained an injury on (day after date of injury), until sometime in June 1997 when he learned from Mr. R, the employer's safety manager, that claimant was having difficulty obtaining her claim records from her previous employer and he assumed she was pursuing a claim against that employer.

Ms. H testified that claimant told her in November 1996 that she needed information to reactivate her 1992 claim but that she did not report having a near fall and injury in November 1996. Ms. H said she knew claimant was having some pain and needed information on her prior claim but that claimant did not report a new injury or else she would have obtained the information for a TWCC-1. Ms. H said she did prepare a TWCC-1 on June 17, 1997, after learning from Mr. L that claimant was asserting a new injury.

Mr. R testified that he investigated the matter in June 1997 and that to the best of his knowledge, the employer first learned in June 1997 that claimant was asserting a new injury to her neck and left side from a near fall in November 1996.

Claimant has appealed findings that she did not inform her employer that she believed she injured herself at work on _____, until June 17, 1997, and no good cause exists for her failure to do so; that she did not act as a reasonably prudent person by failing to notify her employer of a work-related incident between December 7, 1996, and June 17, 1997; that the evidence did not establish that the carrier or the employer had actual knowledge of her _____, injury; and that she failed to establish that lost time of eight days or more between November 11, 1996, and November 4, 1997, taken for doctor visits and illness, were related to the _____, injury.

Section 409.001 provides that an employee shall notify the employer of an injury not later than the 30th day after the date on which the injury occurs and Section 409.002 provide that failure to so notify an employer relieves the employer and the carrier of liability unless the employer or the carrier has actual knowledge of the injury, the Texas Workers' Compensation Commission determines that good cause exists for failure to provides notice in a timely manner, or the employer or carrier does not contest the claim. Claimant's position at the hearing was that she provided notice of the

claimed injury to Mr. L on (day after date of injury), and to Ms. H on November 15, 1996. She was not relying on either the good cause or actual knowledge exceptions.

Whether claimant provided the employer with notice of her claimed injury within 30 days of its occurrence was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence (Section 410.165(a)) and it is the hearing officer, as the trier of fact, who is to resolve the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). As an appellate reviewing body, we will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer was not required to credit claimant's version of her reporting of the injury but rather could credit the testimony of Mr. L and Ms. H. Since the evidence supports the determination that claimant failed to timely report the claimed injury, the findings support the conclusions that claimant did not sustain a compensable injury on _____, and did not have disability because the carrier is not liable for such claimed injury.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Alan C. Ernst
Appeals Judge