

## APPEAL NO. 981824

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 on July 1, 1998. The only issue before her was whether the appellant (claimant) timely filed a claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year of the injury and, if not, whether good cause existed for failing to timely file a claim. The claimant and the respondent (carrier) stipulated that the claimant sustained an injury working for the employer on \_\_\_\_\_, and that he had not lost time as a result of the injury. Some of the findings of fact in the Decision and Order of the hearing officer have obvious typographical errors, using 1998 rather than 1997, and we consider those dates to be in 1997. The hearing officer determined that the claimant was injured on \_\_\_\_\_; that he had no lost time as the result of the injury; that the employer notified the carrier of the claimant's injury on July 22, 1997; that the carrier contested compensability of the claimed injury on September 8, 1997; that the claimant filed his claim on October 15, 1997; that he did not file his claim prior to the expiration of one year of \_\_\_\_\_; and that he did not have good cause for failing to file his claim until October 15, 1997. The claimant appealed, stating that he disagreed with the decision of the hearing officer; that his treating doctor completed an Initial Medical Report (TWCC-61) dated July 26, 1996; and that the Employer's First Report of Injury or Illness (TWCC-1) was filed by the employer on July 22, 1997, and contending that he had good cause for not timely filing his claim. A response from the carrier has not been received.

### DECISION

We affirm.

The volume on the audiotape of the hearing is very low and considerable time was spent listening to the tape. The Decision and Order of the hearing officer contains a lengthy Statement of the Evidence. Only a brief summary of some of the evidence will be included in this decision. It is undisputed that the claimant was injured while working for the employer on \_\_\_\_\_; that the employer was aware the claimant had been injured; that the employer decided it would not notify the carrier of the work-related injury; that the president of the employer, Mr. F, its comptroller, Mr. H, and the claimant discussed the injury; that the claimant agreed to use his group health insurance to receive treatment for the injury; that the claimant was seen by Dr. I; that Dr. I completed a TWCC-61 dated July 26, 1996, that included a history indicating the injury was work related; that there is no evidence that the TWCC-61 was filed with the Commission; and that the health insurance carrier did not pay Dr. I. In the early part of the summer of 1997, the claimant received a letter from a collection agency concerning the unpaid bills of Dr. I, the claimant spoke with Mr. H, and Mr. H said that there was still time to proceed with a workers' compensation claim and that Mr. H would take care of the matter. The employer filed a TWCC-1 dated July 22, 1997. The carrier filed a Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) dated September 8, 1997, disputing the claim contending the claimant had not filed a claim within one year of the date of injury. The

TWCC-21 indicates that a copy was mailed to the claimant on September 8, 1997. The claimant filed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated October 15, 1997.

We first address the issue of whether the time for the claimant to file a claim was tolled under the provisions of Section 409.008. Section 409.003 provides:

An employee or a person acting on the employee's behalf shall file with the commission a claim for compensation for an injury not later than one year after the date on which:

- (1) the injury occurred; or
- (2) if the injury is an occupational disease, the employee knew or should have known that the disease was related to the employee's employment.

Section 409.004 provides:

Failure to file a claim for compensation with the commission as required under Section 409.003 relieves the employer and the employer's insurance carrier of liability under this subtitle unless:

- (1) good cause exists for failure to file a claim in a timely manner; or
- (2) the employer or the employer's insurance carrier does not contest the claim.

Section 409.005 states that an employer shall file a written report with the Commission and the carrier if the injury results in the absence of work for more than one day or the employee notifies the employer of an occupational disease. Section 409.008 provides:

If an employer of the employer's insurance carrier has been given notice or has knowledge of an injury to or the death of an employee and the employer or insurance carrier fails, neglects, or refuses to file the report under Section 409.005, the period for filing a claim for compensation under Sections 409.003 and 409.007 does not begin to run against the claim of an injured employee or a legal beneficiary until the day on which the report required under Section 409.005 has been furnished.

The employer had notice of the claimant's injury; but the parties stipulated that the claimant had not lost time as the result of the injury, and the employer was not required to file a report of injury for the \_\_\_\_\_, injury under Section 409.005. The employer

filed a TWCC-1 dated July 22, 1997, and a copy was sent to the claimant. The carrier filed a TWCC-21 dated September 8, 1997, contesting the compensability of the claim on the basis that the claimant had not filed a claim within one year of the date of the injury. In the TWCC-21, the carrier used "employee" and the claimant's name in stating that a claim had to be filed within one year of the date of injury and that a claim had not been filed. A copy of the TWCC-21 was sent to the claimant. The claimant filed a TWCC-41 dated October 15, 1997. The time for filing a claim had not been tolled and ran from the date of the injury. Texas Workers' Compensation Commission Appeal No. 93611, decided August 25, 1993. The claimant did not file a claim no later than one year after the date of the injury. Good cause for not timely filing a claim must continue up to the date that the claim is filed. Texas Workers' Compensation Commission Appeal No. 960418, decided April 15, 1996. The hearing officer included a lengthy discussion on good cause in her Decision and Order. While it is not necessary that the claimant knew that he had to file a claim within one year of the date of injury, the hearing officer did not err in considering that the TWCC-21 put the claimant on notice that a claimant is required to file a claim within one year of the date of the injury. Nor did she err in not interpreting the comments of Mr. H to be a reassurance that the employer would file all of the required documents for the claimant. See Texas Workers' Compensation Commission Appeal No. 93871, decided November 12, 1993.

Good cause for delay in filing a claim is shown when a claimant exercises ordinary prudence in filing a claim. The standard of review for determining whether the hearing officer erred in determining whether good cause for delay existed is whether the hearing officer abused her discretion. The Appeals Panel overturns a determination concerning good cause only if the hearing officer acted arbitrarily or without basis in the record. Texas Workers' Compensation Commission Appeal No. 961948, decided November 13, 1996. The hearing officer did not abuse her discretion in determining that good cause for delay in filing the claim did not exist until October 15, 1997.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders  
Appeals Judge

CONCUR:

Robert W. Potts  
Appeals Judge

Susan M. Kelley  
Appeals Judge