

APPEAL NO. 990034

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 14, 1998, a hearing was held. He determined that appellant (claimant) did not show that she sustained a compensable injury (hernia), that the date of injury would be _____, that claimant did not give notice of injury timely without good cause, and that therefore claimant did not have disability. Claimant asserts that she did sustain a compensable injury "beyond a reasonable doubt," that she was afraid of her supervisors and of losing her job but that she nevertheless notified her supervisor, Ms. CD within one week of the incident, and that she had disability for at least six weeks up to 12 weeks. Respondent (school) replied that the decision should be upheld.

DECISION

We affirm.

Claimant worked for the school as a custodian since September 1, 1993. The hearing officer's observation that a six-month period of probation would have expired regardless of whether the date of injury was _____, or (alleged date of injury), is supported by the record. Claimant testified that she and others moved a combination small refrigerator and microwave, by using a dolly, both up and down stairs on (alleged date of injury), and, in doing so, she felt pain in her stomach, which was found to be an incisional hernia. At one point in her testimony claimant stated that she was not sure of the date in (month of date of injury) that this occurred.

Records in evidence indicated that claimant did not work on (alleged date of injury), and there was testimony from Ms. CD, claimant's supervisor, that the "microfrig" in question was moved on _____; Ms. CD also said that it weighed about 88 pounds, that she was present during the movement of one microfrig out and a replacement in, and that claimant was not one of those holding the dolly, but was walking behind, "laughing and joking."

Claimant stated that the first doctor she saw for the pain in her stomach was Dr. H. Both Dr. H's records in evidence and Dr. H, in his testimony, indicate that he did not see claimant until May 1994 (May 6, 1994, is set forth in his records, although no document from that date was provided). The record under review also shows that claimant saw Dr. K on April 18, 1994, but Dr. K does not say for what reason and says that claimant may return to work on May 5, 1994. Dr. K's letterhead indicates he is with the (Clinic).

Claimant was also seen by Dr. G on May 10, 1994. He found "significant pelvic tenderness." He indicated that she had been treated for a urinary tract infection. Dr. G said that she recently had a diagnosis of hernia from an "Ob-gyn." He also alluded to a pelvic infection and ovarian cyst. Claimant testified to having surgery on May 27, 1994, and one note by Dr. P, an emergency room physician, stated in June 1994 that claimant had surgery for "a hysterectomy on May 27, 1994, and hernia repair."

Ms. R testified that she worked with claimant and that claimant told her in the afternoon of the same day the microfrig was moved (claimant testified it was moved in the early morning) that "her stomach was hurting." Both claimant and Ms. R either described or implied that Ms. CD was intimidating and that Ms. CD's boss, Mr. D, was rude. While claimant testified that at Ms. R's urging she told Ms. CD "about three days" after the incident that she hurt her stomach moving the microfrig and that Ms. CD said she would tell Mr. D, claimant also stated that she was afraid to give notice for fear of her supervisors and fear of losing her job. Ms. CD testified that claimant did not tell her of any injury, that she did not say she would tell Mr. D, and that she first heard of an allegation of injury in June 1994.

Ms. Ru also testified. She is a medical social worker, who said she accompanied claimant to see Mr. D in May. She said that Mr. D was very rude to her, and she and claimant left his office, went to a Texas Workers' Compensation Commission (Commission) office that day, and at the Commission filled out a notice of injury. A notice of injury in the record is dated May 17, 1994.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The hearing officer did not have a medical report in evidence indicating that claimant promptly sought medical care after her alleged injury. The medical reports he did have indicated several medical problems faced by claimant. With part of his duty to resolve conflicting evidence, he did not have to believe claimant's testimony when she said that she told Ms. CD within three days (or the same week) as the incident when Ms. CD denied that such notice was provided. Also, as the fact finder, the hearing officer had claimant's testimony that she told Ms. CD within a few days of the incident even though claimant argued that she had good cause for untimely reporting because she was afraid of her supervisor and afraid to lose her job if she reported an injury.

Dr. H testified that it was "quite possible" that claimant sustained her incisional hernia from moving the microfrig, he agreed that he first saw claimant on May 6, 1994. He did say that a person can work with a urinary tract infection and lupus. He did not say what length of time could pass after an incident before a hernia would appear. (He did describe claimant as having had her children by Cesarean section and that the hernia involved was in the same area as the incision from those operations.) Dr. H also said that he thought it was probable that claimant sustained the hernia from her work moving the microfrig.

The hearing officer stated in his Statement of Evidence that claimant's testimony showed a certain amount of confusion and indicated that he did not consider her credibility as being unassailed (although he also said that her injury "could have happened as she said"). In this same Statement of Evidence, the hearing officer also said that the testimony of Dr. H "was less than helpful," by pointing out inconsistencies, vagueness, and lack of knowledge of claimant's many problems.

The hearing officer was sufficiently supported by the evidence, including medical evidence, when he indicated that the evidence did not show that claimant sustained an

incisional hernia on _____ or (alleged date of injury), 1994. He also was sufficiently supported by the evidence in finding that claimant gave no notice within 30 days of the incident and did not have good cause for failing to give timely notice. Without a compensable injury, there can be no disability. See Section 401.011 (16).

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge