

APPEAL NO. 990102

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 20, 1998, a hearing was held. He (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury to her left knee after finding that the "date of injury" was _____. He also found notice was not timely given, with no good cause shown, and no disability was incurred. Claimant asserts that a finding of fact that states the date of injury to be _____, is in error, but in her argument she states that she "does not find fault" with this determination because the evidence was conflicting (between _____, and December 15, 1997). Claimant also states that the evidence showing an injury occurred is "consistent" and appears to question how the fact finder could determine no injury occurred based on uncertainty as to the date of injury. She cites her testimony of notice to the head custodian on December 17, 1997, and then states that the hearing officer gave no reason for finding no good cause for delay, adding that the injury was trivialized. She states that she has disability. Respondent (self-insured) replied that the decision should be affirmed.

DECISION

We affirm.

The hearing officer's Statement of Evidence is exhaustive. This Appeals Panel decision will not restate the evidence. Basically, claimant stated that she injured her left knee in trying to keep a garbage container, on wheels, from turning over to the right as she was maneuvering it up a ramp to a dumpster.

A date of injury of _____, was provided in several of claimant's reports and in the history provided in the initial chiropractic treatment she received over one month later, on January 16, 1998. While claimant testified that she was confused because she knew the date of injury was while Mr. M, the head custodian, was on vacation and later learned he was on vacation on December 15, 1997, Mr. M testified that he was on vacation beginning _____, through December 16, 1997. The hearing officer's choice of _____, as the date of the alleged injury was clearly supported by sufficient evidence.

Claimant states that the evidence is consistent that she injured her knee compensably. She, however, stated that she continued to work until the middle of January. In addition, she did not obtain medical care until January 16, 1998, at which time a sprain/strain was diagnosed. Finally, the hearing officer specifically stated that he did not find claimant "credible" or "truthful." While claimant implies that this conclusion was too heavily influenced by the confusion as to the date of injury, the hearing officer points out that it also involved claimant's recitation as to how the injury occurred—specifically whether there was a ramp where garbage was dumped or not. The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. He may or may not give significant weight to the testimony of a claimant as to how an injury occurred. See Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Presley v. Royal Indemnity Insurance Co., 557 S.W.2d 611 (Tex. Civ. App.-

Texarkana 1977, no writ); and Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). With questions of credibility, the time elapsed until medical care was sought, and with claimant continuing to work, the hearing officer was sufficiently supported in finding that claimant did not show she sustained a compensable injury.

Claimant testified that she told Mr. M on December 17, 1997, twice, that she injured her knee at work two days before. Mr. M testified that claimant told him of her knee injury on January 13, 1998, just after telling him of her back injury of December 29, 1997 (there was no issue as to the latter back injury, and it was stated at this hearing not to have been disputed). Mr. M repeatedly stated that claimant did not tell him on December 17, 1997, and that the first time she told him was on January 13, 1998. The evidence was in conflict, and in that situation the hearing officer may choose to give more weight to the testimony of a witness, such as Mr. M, than he does to that of the claimant. While claimant on appeal mentioned triviality, the testimony at the hearing did not develop that theory. Claimant testified that she did not seek medical care sooner because she was waiting to receive authority to obtain medical care, not that she had no, or little, problem with the knee. With the record providing the information that it does, the evidence sufficiently supports the finding of no timely notice with good cause not shown for late notice.

With no compensable injury, there can be no disability. See Section 401.011(16). (The parties indicated at the hearing that disability for the knee would begin in June; prior to that time, disability had been caused by the back injury which was not in issue.)

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:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge