

APPEAL NO. 990681

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 1, 1999. He (hearing officer) determined that the appellant (claimant) did not timely report her injury and that she did not have disability. Claimant appeals these determinations on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that she sustained a bilateral carpal tunnel syndrome (CTS) injury at work. She said that, before August 21, 1998, she had been missing a lot of work because of the illness of two family members and because she was also ill. Claimant testified that she is also pregnant, but said that the reason she is claiming disability is because of her hands. Claimant testified that her treating doctor, Dr. G, has not taken her off work.

The hearing officer determined that the reason why claimant missed work was because of "other medical and personal reasons." In this case, there was evidence that claimant had been missing work for reasons unrelated to CTS. The hearing officer could and did find that claimant failed in her burden to establish that she had disability. We will not substitute our judgment for that of the hearing officer because his determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain, supra.

Claimant contends the hearing officer erred in determining that claimant did not timely report her injury to her employer. Generally, a claimant must report an occupational disease injury to his or her employer within 30 days of the date he or she knew or should have known that the injury was work related. Section 408.007; Section 409.001. No particular form or manner of notice is required and notice is sufficient if it reasonably informs the employer of the general nature of the injury and that it is claimed to be work related. DeAnda v. Home Insurance Co., 618 S.W.2d 529 (Tex. 1980). A claimant may be excused from timely notifying the employer of an injury if he or she establishes good cause. Section 409.002(2). The

Appeals Panel has held that trivialization may constitute good cause for delay in reporting an injury. Texas Workers' Compensation Commission Appeal No. 951862, decided December 20, 1995; Texas Workers' Compensation Commission Appeal No. 951899, decided February 16, 1996. Whether proper notice has been given is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 941347, decided November 23, 1994.

Claimant testified that in May 1998, she reported to her supervisor, DG, that she had pain in her hands. Claimant said that at that time, she did not know the pain was work related. Claimant said the pain became worse and sometime around _____, she told her supervisors that she had pain that was due to work. Both DG and Ms. V denied that claimant ever reported a work-related injury to them.

Here, the evidence conflicted regarding whether claimant promptly reported an injury to her supervisors. The hearing officer determined that claimant did not meet her burden in this regard. The hearing officer determined that claimant did not timely notify her employer of the injury on or about _____, as claimant had claimed. The hearing officer determined that by _____, claimant knew or should have known that she sustained a work-related injury, and that the employer did not receive notice of any injury until September 23, 1998. This was not within 30 days of _____. In light of claimant's testimony and our standard of review, we will not disturb the hearing officer's finding in this regard because it is not against the great weight and preponderance of the evidence. *Cain, supra*. Claimant contends that she had good cause for failing to report the injury within 30 days because she trivialized the injury. However, claimant did not testify that she delayed in reporting because she trivialized the injury. She testified that she reported the injury timely. Claimant complains that the hearing officer believed some testimony and disbelieved other testimony. The hearing officer was the sole judge of the credibility of the evidence and it was not error for him to decide what portions of any evidence that he found credible. Claimant complains that the hearing officer did not consider whether claimant had good cause for failure to timely report an injury. However, the hearing officer made findings regarding good cause in this case.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge