

APPEAL NO. 990773

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A contested case hearing (CCH) was held on March 11, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____; whether the claimant gave timely notice of injury; and whether the claimant sustained disability. At the CCH, the claimant changed the date of injury to be (incorrect date of injury). The hearing officer determined that the claimant did not sustain an injury in the course and scope of her employment with a date of injury of _____ or (incorrect date of injury); that the respondent (carrier) was relieved of liability for the claimed injury for failure of the claimant to give timely notice of injury to the employer; and that the claimant did not have disability as a result of the alleged injury. The claimant appeals, urging that the determinations of the hearing officer are against the great weight and preponderance of the evidence and that the hearing officer's finding that the claimant's version of events is not credible is not supported by any evidence. The carrier responds that there is sufficient evidence to support the findings and conclusion of the hearing officer.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth the evidence in the case fairly and adequately and is adopted for purposes of this review. Very briefly, the claimant testified that although she initially indicated she injured her back on _____, she pegs the date of injury to (incorrect date of injury), because of a funeral she attended on that date. She testified that she worked in a janitorial position for the employer and felt pain in her back when she lifted a chair onto a table. The claimant continued working (she states she was assisted by her family) in the position until late January 1998, when she was terminated. She then started working as a housekeeper for the employer's wife. She continued working in the housekeeping position until August 1998, when her hours were cut back and she injured her back again. She subsequently claimed the 1997 back injury. Claimant stated that she had difficulty working and that she was given leeway in her housekeeping duties. She stated that she attempted to tell the manager about her back one day when he was at the copy machine but that she did not tell him she hurt her back at work. She testified that she was concerned with being fired. She also talked to the employer's wife about her back but did not relate any work relationship. It is apparent that the claimant has continued to suffer back pain and leg pain and weakness. Medical records in evidence suggest a history of back problems and complaints involving an arthritic condition. An MRI in September 1998 showed no evidence of disc herniation, a small bulge at L5-S1, and mild to moderate facet degenerative changes. The claimant has been in therapy programs.

From the evidence before him, the hearing officer determined that no injury was suffered on _____ or (incorrect date of injury); that the claimant failed to give

timely notice of injury; and that she has not had disability. It is apparent that the hearing officer was unconvinced by the claimant's testimony and noted that her assertion for not reporting an injury was fear of being fired, yet no report was made even after she was terminated in late January or early February 1998. In addition, the claimant's course of continuing work and history of nonjob-related back problems were factors that weighed against an injury in course and scope, failure of timely reporting an injury, and disability. While it is apparent that the claimant suffers significant back problems, there is no overwhelming evidence to show that it is causally related to her work, which would warrant a reversal of the hearing officer's findings and conclusions. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 980243, decided March 18, 1998 (Unpublished). Aside from the fact that the claimant continued working, which tends to discount disability, the lack of an injury in course and scope precludes disability as defined in Section 401.011(16). And, regarding timely notice, the claimant's testimony shows that she did not report a work-related injury although she did complain of her back bothering her. This was not a sufficient basis to find timely notice. Texas Workers' Compensation Commission Appeal No. 91016, decided September 6, 1991. Finding no legal error and sufficient evidence to support the decision and order of the hearing officer, we affirm.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge