

APPEAL NO. 990921

On March 24, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Appellant (carrier) requests reversal of the hearing officer's decision that respondent (claimant) sustained an injury to his head in the course and scope of his employment on _____, and that claimant reported a head injury to his employer not later than the 30th day after the injury. There is no appeal of the hearing officer's decision that claimant did not sustain an injury to his neck or shoulders, that he did not have disability, and that he did not have good cause for failing to attend the CCH. No response was received from the claimant.

DECISION

Affirmed.

Notice of the time, date, and place of the CCH was sent to claimant. Claimant did not attend the CCH. Carrier attended the CCH and its exhibits were made part of the record. On March 24th, following the CCH, the hearing officer sent claimant a notice that he could contact the Texas Workers' Compensation Commission within 10 days to request that the CCH be reconvened to permit him to present evidence on the issues and to show good cause for failing to attend the CCH. The hearing officer states that claimant did not respond to that notice.

In a transcribed recorded statement, claimant stated that on _____, while working in employer's shop, he was hit on his head by the forks of a forklift and that he was knocked down. When asked whether he reported the injury, he said that he reported it to his supervisor, RR, about five minutes after it happened. Claimant said he had soreness in his neck and had stiffness in his neck and shoulder. He also said that he told the forklift driver's supervisor "about it too." When claimant was asked whether he was saying that "it happened back in April and you reported it to the supervisor," claimant said "right." In a transcribed recorded statement, RR stated that he was aware that claimant was hit in the head by the load on a forklift, that claimant had always had headaches before that accident, that before and after the accident claimant complained about his head hurting, and that claimant did not relate his headaches to the accident.

Claimant was seen by Dr. B for severe headaches in March 1997, and Dr. B noted that claimant had had headaches for the past two years. Dr. B noted in December 1997 that an MRI of claimant's head showed sinuses that are mild in severity with mucus thickening. Claimant was seen by Dr. L on October 16, 1998, and Dr. L noted that claimant's chief complaint was neck pain which had started "in August when fork lift hit head." Dr. L diagnosed claimant as having a cervical strain.

Claimant had the burden to prove that he was injured in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ.

App.-Texarkana 1961, no writ). Claimant also had the burden to prove that he timely reported the injury to his employer. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). Section 409.001(a) provides that, for injuries other than occupational diseases, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the injury occurs. In DeAnda v. Home Insurance Company, 618 S.W.2d 529 (Tex. 1980) it was held that, to fulfill the purpose of the notice provision, the employer need only know the general nature of the injury and the fact that it is job related. In Texas Indemnity Ins. Co. v. Bridges, 52 S.W.2d 1075 (Tex. Civ. App.-Eastland 1932, writ ref'd), the court stated that the statute requiring notice of the injury does not specify that the injury must be described in detail. The Appeals Panel has held that a claimant is not required to report the extent of injury to meet the reporting requirement. Texas Workers' Compensation Commission Appeal No. 950844, decided July 10, 1995.

Carrier contends that there is insufficient evidence to support the hearing officer's findings that claimant had pain which was the result of damage or harm to the physical structure of his body as a result of the incident of _____, and that claimant reported striking his head to his employer on the date of the incident. Carrier also contends that insufficient evidence supports the hearing officer's conclusions that claimant sustained an injury to his head in the course and scope of his employment on _____, and that he reported a head injury to his employer not later than the 30th day after the injury. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence. We conclude that sufficient evidence supports the appealed findings and conclusions and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Tommy W. Lueders
Appeals Judge

