APPEAL NO. 991167

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 May 5, 1999. With regard to the issues before him, the hearing officer determined that respondent (claimant) had trivialized his wrist injury and had good cause for failing to timely report the injury to his employer, and that claimant had disability from February 10, 1999, to the date of the CCH.

Appellant (carrier) appeals, contending that the decision is "contrary to law" and is not supported by the evidence. Specifically, carrier cites testimony that claimant's condition stayed about the same after the injury and that good cause must extend up to the time of the report of the injury. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. Claimant responds urging affirmance.

DECISION

Affirmed.

Claimant was employed as a shuttle bus driver. Claimant testified regarding the circumstances on December 19, 1998, where he was changing a flat tire on a van, how the jack would not work properly, his efforts to locate another jack, and how he injured his wrists as a result of trying to crank the jack. Claimant testified that he did not think his injury was serious and that he continued to work using home remedies and bandages on his wrists. Statements from coworkers confirm that claimant was wearing wrist wraps and, when asked what happened, claimant said that "he had strained them changing the flat on the van with the bad jack." In a statement dated March 30, 1999, (Mr. L), a coworker and union steward, said that in "late December" he had asked claimant why he was wearing wrist wraps, that claimant told him about changing the tire, and that he had advised claimant to report the injury but that claimant "stated it was just a sprain and he did not want any hassles with the [employer]."

Claimant testified that when his wrists did not get better, he sought medical treatment from Dr. W on February 10, 1999. In a report of that date, Dr. W notes a complaint of "[r]ight and left wrist synonitis," the tire changing incident, and notes "discomfort with palpation over the wrists at the flexor tendon area." X-rays showed some soft tissue swelling. Claimant reported his injury on February 10, 1999, and filed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) on February 23, 1999. In a follow-up report dated March 3, 1999, Dr. W is of the opinion that most likely claimant "sustained micro-tears of the dorsal wrist capsules" and prescribed bilateral wrist splints. Dr. W commented that the "old x-rays" showed soft tissue swelling at the wrists. Dr. W commented he wanted to have an MRI done but was waiting for carrier approval.

The hearing officer found that claimant had trivialized his injury and did not report the injury until February 10, 1999, after he had treated with Dr. W, who informed him that the injury was serious. It is carrier's contention that claimant's testimony was that the injury did not get worse so, therefore, claimant should have known the injury was serious when it did not resolve within a few days and certainly when Mr. L suggested in late December 1998 that claimant report it to the employer.

Generally, a claimant must report an injury to his employer within the requisite 30-day period, Section 409.001, unless there is good cause for the failure to timely report the injury. Section 409.002(2). The question of good cause for failure to timely report an injury is a question for the fact finder. Texas Workers' Compensation Commission Appeal No. 93550, decided August 12, 1993. A claimant must act with diligence in notifying the employer of a claim. Texas Workers' Compensation Commission Appeal No. 93649, decided September 8, 1993. A reasonable time should be allowed for the preparation and filing of a claim after the seriousness of the injury is suspected or determined. Appeal No. 93649. The claimant has the burden to prove good cause. Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994. The test for good cause is that of ordinary prudence or "that degree of diligence that an ordinary person would have exercised under the same or similar circumstances," and it is within the purview of the hearing officer to determine what ordinary prudence is under the circumstances. *Id*. A reason or excuse generally recognized as good cause for late reporting is the belief of the employee that the injury is trivial. Appeal No. 94114. Good cause must continue to the date when the worker actually files the claim. Appeal No. 93649, *supra*.

This cause revolves around whether claimant exercised the degree of diligence of an ordinary person under the same circumstances. The hearing officer accepted claimant's testimony and concluded that wrapping the wrists using home remedies and continuing to work constituted sufficient trivialization to constitute good cause for failing to timely report the injury. 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 he was unable to work and the medical records support that Dr. W has taken claimant off work. Disability is defined as the inability because of the compensable injury to obtain and retain employment at the preinjury wage. Section 401.001(16). The hearing officer's finding on disability is sufficiently supported by the evidence.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Joe Sebesta
Appeals Judge