

APPEAL NO. 991234

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 990157, decided March 15, 1999, the Appeals Panel affirmed that part of the hearing officer's decision and order which found that the respondent (claimant) sustained an occupational injury including reflex sympathetic dystrophy (RSD) of the upper right extremity and a right hand/wrist injury on _____. We reversed that part of the decision and order which found that the employer had actual knowledge of the injury thereby relieving the claimant of the effects of not timely reporting the injury, and rendered a decision that the employer did not have actual knowledge of the injury. We remanded for further findings of fact and conclusions of law on the issue of whether the claimant had good-cause for failing to give timely notice of her injury. We also reversed and remanded the findings of a compensable injury pending resolution of the good cause question. The hearing officer, conducted a hearing on remand on April 26, 1999. He thereafter issued a decision and order in which he found good cause for the lack of timely notice and that the claimed injuries were compensable. The carrier appeals these determinations, contending that the hearing officer failed to apply the correct law to the good cause issue and that his resolution of this issue is contrary to the great weight and preponderance of the evidence. The appeals file contains no response from the claimant.

DECISION

Reversed and a new decision rendered.

The background facts of this case are contained in Appeal No. 990157, *supra*, and need not be repeated here. The facts relevant to a resolution of the good-cause issue are largely undisputed. Sections 409.001 and 409.002 provide generally that a claimant must give the employer notice of the injury no later than 30 days after the date of injury. Failure to do so, absent good cause, relieves the employer and carrier of liability for the injury. The date of injury for an occupational disease as claimed in this case is the date the claimant "knew or should have known that the disease may be related to the employment." Section 408.007. At the original contested case hearing (CCH), the parties stipulated that the date of injury was _____. They re-confirmed this stipulation at the CCH on remand. This stipulation established as fact that the claimant knew or should have known on _____, that her right wrist/hand and upper extremity injury, whatever the ultimate diagnoses, may be related to her employment. The parties also agreed that notice of the injury was not given until July 15, 1998, nearly three months after the date of injury. A determination of good cause for the late notice thus became critical to a finding of a compensable injury.

The test for good cause is that of ordinary prudence, that is, whether the employee has prosecuted the claim with the degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances. Hawkins v. Safety Casualty Co., 146 Tex. 381, 207 S.W.2d 370 (1948). In Texas Workers' Compensation Commission Appeal No. 94050, decided February 25, 1994, we observed the following:

"Our review of the Texas case law reveals that the reasons or excuses commonly recognized as 'good cause' include the claimant's belief that the injury is trivial, mistake as to the cause of the injury, reliance on the representations of employers or carriers, minority, and physical or mental incapacity, while the advice of third persons and ignorance of the law are frequently held not to constitute good cause." Whether an employee has exercised that degree of diligence required under the ordinarily prudent person test is usually a question of fact for the fact finder. A claimant's conduct must be examined "in its totality" to determine whether the ordinary prudence test was met, and the reason given for delay will generally be found in the claimant's own testimony. See Farmland Mutual Insurance Company v. Alvarez, 803 S.W.2d 841 (Tex. App.-Corpus Christi 1991, no writ).

The claimant, through her attorney, expressly disavowed any reliance on trivialization of the injuries as the basis for good cause, conceding that the effects of the injuries on the claimant's life and work precluded a finding that she had a bona fide belief that her injuries were trivial. Rather, she asserted that good cause existed for the reasons that (1) no one told her the injuries were work related until she was told by Dr. M on July 15, 1998, the date she reported the injuries, and (2) because she did not have a diagnosis of her injuries until July 15, 1998. The hearing officer devoted the great majority of his discussion of this case to the already decided actual knowledge finding and offered virtually no analysis of good cause. As to good cause, he stated that "I believe the Claimant's testimony when she states that 7-15-98, was the first time that a doctor told her the injury was related to her work." He then made a finding of good cause for the late reporting "because that is the first time that a doctor told her that her injury was work related." Finding of Fact No. 1. The carrier appeals this determination, asserting:

The Hearing Officer used the incorrect standard in determining whether the Claimant had good cause for not reporting her injury until July 15th. He failed to use a reasonable person standard. Further he failed to acknowledge the stipulation made by the parties on the date of injury. Further, he failed to consider evidence indicating that the Claimant did not have good cause for failing to report her injury prior to July 15th.

We agree that the hearing officer failed to apply the established test of reasonable prudence to the facts of this case in arriving at his good cause determination. The sole factual basis for his finding of good cause was that the claimant was not told by a doctor what the precise diagnosis was until July 15, 1998. We are aware of no authority for the implied proposition that good cause exists as a matter of law pending a definitive diagnosis by a doctor. See Texas Workers' Compensation Commission Appeal No. 92559, decided December 3, 1992, which said no medical verification is necessary to determine when a claimant "knew or should have known." Indeed, in this case there has yet to be a definitive diagnosis of the right hand/wrist injury. More importantly, this standard ignores the "totality" of the claimant's conduct in not timely reporting her injury, particularly her acknowledgment by way of stipulation that as of _____, she knew or should have known that her injuries may be work related. Being charged with this knowledge, she was required to act with reasonable prudence if she delayed her report beyond 30 days. Because the hearing

officer applied the incorrect legal standard in his analysis and finding of good cause, we reverse that determination. No further remands being authorized by law, see Section 410.203(c), we render a decision that the claimant failed to establish good cause for not timely reporting her injury. The injury, though work-related, is not compensable and the carrier and employer are relieved of liability for benefits.

Alan C. Ernst
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Elaine M. Chaney
Appeals Judge