APPEAL NO. 991665

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 June 30, 1999. The issues at the CCH were whether appellant (claimant): (1) timely reported his injury; (2) had disability; and (3) made a knowing election of remedies. The hearing officer determined that claimant did not timely report his alleged injury, and did not have good cause for such failure; that claimant did not have disability; and that claimant did not make an informed election of remedies. Claimant appeals, contending that he timely reported his injury and that he had disability. Claimant complains that he had difficulty proving his case because of language and cultural barriers. Respondent (carrier) responds that sufficient evidence supports the challenged determinations.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he did not timely report his injury. Claimant asserts that he was not sure if he had injured himself at work on _____; that he thought he might just have rheumatism; that when he realized he had a work-related injury, he reported it in June 1998 to Mr. D, soon after he received the results of his MRI testing; and that the fact that he filed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) on June 14, 1998, shows that he timely reported his injury.

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 purpose of the notice provision is to give the insurer an opportunity to immediately investigate the facts surrounding an injury. DeAnda v. Home Insurance Co., 618 S.W.2d 529 (Tex. 1980). 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. Where the claimant offers evidence that the supervisor was notified of the injury, but the supervisor testifies he or she was not notified, a question of fact exists for determination by the trier of fact. St. Paul Fire & Marine Insurance Co. v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 91066, decided December 4, 1991.

Claimant testified through an interpreter and stated that he does not speak or understand English. Claimant testified that he injured his neck on _____, while carrying a compressor. Claimant said that that same day he reported to his supervisor, Mr. D, that he hurt himself lifting a compressor. Claimant also testified that he is not sure whether he told Mr. D what had caused his pain. Mr. D said that he has not had difficulty communicating with claimant at work and that claimant understood their conversations. He said claimant came in around June 6, 1998, and said his neck and shoulder hurt, but denied that the problem was work related when asked. Mr. D said he did not find out that

claimant was claiming a work-related injury until about a month after June 6, 1998. Mr. B, employer's employee relations manager, stated that he had communicated with claimant in English in the past without any problem and that claimant is "easy to communicate with."

In this case, the hearing officer determined that claimant was not credible in his testimony, that claimant first reported his _____, injury on August 20, 1998, and that he did not act as a reasonably prudent person in delaying the reporting of the injury. We have reviewed the record and we conclude that the hearing officer's timely notice determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Claimant contends the hearing officer erred in determining that he 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). Because there was no compensable injury, there can be no disability.

Claimant complains that the hearing officer failed to mention certain evidence in her decision and order. However, the hearing officer was not required to set forth all of the evidence. There is nothing to indicate that the hearing officer did not consider the evidence admitted at the CCH. We perceive no error.

Claimant contends that he had difficulty proving his case effectively because of cultural differences and communication problems. Our review of the record indicates that claimant asked for and received clarification regarding questions several times. It appeared that, after clarification, claimant was able to answer the questions asked of him. The hearing officer was present at the CCH and was in the best position to ensure that there was an adequate translation and that claimant answered the questions asked of him. The hearing officer heard the testimony and determined whether claimant was able to communicate with employer's representatives regarding his injury.

We appreciate that a person who does not speak English may have more difficulty understanding dispute resolution proceedings. Again, a translator was provided and it appeared that claimant did answer the questions and did seek clarification at times, which was provided to him. There is no authority, however, for us to apply the law differently to non-English speakers. After reviewing the record as a whole, we are satisfied that the evidence was developed regarding the issues and that the hearing officer had before her a developed record so that she could decide the issues in this case.

We affirm the hearing officer's decision and order.

_____
Judy Stephens
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge