APPEAL NO. 991896

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 August 4, 1999. He (the hearing officer) determined that the appellant (claimant) did not sustain a compensable low back injury on _____; that the claimant, without good cause, failed to timely report the claimed injury; and that the claimant was not barred from pursuing workers' compensation benefits because of an election to receive group health insurance benefits. The claimant appeals the adverse determinations, expressing his disagreement with them. The appeals file contains no response from the respondent (self-insured). The election of remedies determination has not been appealed and has become final. Section 410.169

DECISION

Affirmed.

The claimant worked as a therapist/technician at the self-insured's home for the mentally handicapped. His job duties included imposing physical restraints on aggressive patients as required and yearly training in such procedures. He testified that about _____, he felt low back pain that he never felt before while assisting a patient and while bending over. He did not report this pain. On January 6, 1999, he saw Dr. B, his family doctor, because of numbness in the hip and radiating pain and was eventually diagnosed with lumbar herniation. He also stated that at physical restraint training on _____, he fell too hard and "could have" hurt himself then. Beyond this, he could not pinpoint a specific incident. He further testified that he told Mr. B, his supervisor, on _____, after the training that his back was hurting but did not mention why. He said he asked Mr. B if he was going to report it to risk management, and Mr. B said he would take care of it. In an accident report for the self-insured that the claimant completed on March 12, 1999, the claimant referred to a date of injury in "mid-January" even though treatment for it was received on _____, and attributed the cause not to the training, but to restraining a patient.

Mr. B testified largely that he did not recall significant aspects of the incident or the reporting of it. He said he first received a report from the claimant connecting his back injury to an incident at work on March 12, 1999, presumably in the incident report. He did not recall an incident where other employees told him at a meeting that the claimant said he was hurt after the training. He said that the self-insured's procedure was to report any injury whether it occurred on the job or not and that the claimant never said the injury was work related until he, Mr. B, obtained the report in March 1999. Three coworkers completed a statement in which they said they were present when Mr. B said that the claimant appeared in pain after the training on _____, and that he was going to report this to risk management.

The claimant had the burden of establishing that he sustained a compensable injury as claimed, whether by reason of single or repetitive trauma. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so was a question of fact and could be proved by his testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In his discussion of the evidence, the hearing officer commented that the claimant "did not know how or when he was injured" and concluded that he failed to establish a compensable injury among the various competing positions brought forward by the claimant. These included an incident at training on _____, and physically restraining a patient sometime in January. In his appeal, the claimant again states that it is hard to "pin point" how and when the injury occurred, "but that does not mean that the injury did not occur at work. . . ." The hearing officer, as fact finder, was the sole judge of the weight and credibility of the evidence. Section 410.165(a). He did not believe the claimant's testimony was sufficiently definite to establish a work-related injury or the date of that injury. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support this determination.

Sections 409.001 and 409.002 provides that a claimant must give the employer notice of the injury by the 30th day after it occurs. Failure to do so absent good cause relieves the employer and carrier of liability for benefits. To be adequate, the notice must provide the employer with information about the general nature of the injury and that it is job related. Texas Workers' Compensation Commission Appeal No. 94936, decided August 23, 1994. Whether and, if so, when notice is given in compliance with the statutory requirements are questions of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994. The claimant does not rely on good cause for an untimely notice, but insists he reported the injury to Mr. B on _____, which was within 30 days of the claimed date of injury of _____. Mr. B testified that the claimant only mentioned that his back was hurting and did not relate this condition to any incident at work. There was other evidence from which the hearing officer could conclude that the claimant did make the connection when he reported the injury, and the claimant's testimony could also be interpreted as consistent with Mr. B's. The hearing officer found Mr. B credible and that the claimant on _____, "failed to advise the supervisor that he thought he had hurt his back due to some aspect of his work." Finding of Fact No. 7. He further found contrary to the position of the claimant that the report was not made until March 12, 1999. Under our standard of review, this testimony was sufficient evidence to support the finding of no timely notice.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge