APPEAL NO. 991915

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 16, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury to her lumbar spine on _____, and whether the respondent (self-insured) was relieved of liability for the claimant's failure to timely notify the employer of the injury. The hearing officer determined that the claimant did not sustain a compensable injury to her lumbar spine on _____, and that the self-insured was relieved of liability for the claimant's failure, without good cause, to timely notify the employer of the injury. The claimant appeals urging medical evidence does show a causal relationship between her back injury and her work, and that there is evidence that she did immediately report the injury to her supervisor. There is no response on file.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth fairly and adequately the evidence in the case and it will only be summarized here. The claimant states that on _____, she felt pain in her low back as she climbed into her chair after raising it. She states she told a coworker and subsequently reported the matter to her supervisor. The supervisor denied that the claimant reported any injury and that the first she knew of a claimed injury was in December. In any event, the claimant states she went to a doctor later in the day and that she was told it was arthritis after x-rays were taken. The claimant continued to work, continued to have low back pain, and eventually had an MRI in November which indicated discs desiccated at L4-5 and L5-S1. Although the claimant denied prior back pain, but acknowledged shoulder problems, a medical report entry dated December 3, 1998, indicates that about a year ago the claimant had back pain and requested a back support for her chair. The claimant saw Dr. M and his subsequent diagnosis of the claimant showed spondylolisthesis L4-5, herniated nucleus pulposus L4, spinal stenosis L4-5, and degenerative disc disease. Dr. M recommended surgery and states in a report that "I believed that the events of _____ exacerbated the patient's underlying condition of spondylolisthesis L4-L5 and spinal stenosis" and that "the twisting required of [claimant] to sit in a chair somehow aggravated her underlying condition causing the pain and discomfort." The adjuster on the case indicated that the claimant had not been consistent in her description of the incident and the claimant's testimony did not indicate she twisted causing her pain.

The hearing officer found that the claimant failed to establish a causal relationship between her current low back condition and an event at the workplace on _____, and thus a compensable injury was not proven. There was some conflict and inconsistency in the evidence for the hearing officer's resolution and different inferences might be possible from the evidence; this is not a sound basis to disturb factual findings and reverse a decision. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d

701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer, as the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given the evidence (Section 410.165(a)) was not required to accept the testimony of the claimant at face value. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Only were we to conclude from our review of all of the evidence that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be sufficient grounds to reverse on a factual sufficiency basis. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ).

Regarding the timely notice issue, the testimonies of the claimant and the supervisors were in direct opposition. It is apparent that the hearing officer found the supervisor's testimony more persuasive on this matter. However, the claimant indicated that she did not realize she had a work-related injury until the MRI in late November. The hearing officer apparently accepted this as the case and concluded that the claimant had good cause up to that time for not reporting an injury. However, the claimant did not report the injury following the information provided by the MRI until December 23, 1998. The hearing officer found that good cause for the untimely notice did not extend to December 23rd, and, thus, the self-insured was relieved of liability. We have held that good cause, once established, must generally continue up to the date the injury is reported. Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994. Here, that date, as supported by sufficient evidence, was December 23, 1998. Good cause did not continue after the claimant was advised of the MRI results and, thus, the determination of the hearing officer that the self-insured was thus relieved of liability is supported legally and factually.

Finding no prejudicial error and sufficient evidence to support the decision and order of the hearing officer, we affirm.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

CONCURRING OPINION:

I concur in the affirmance of the hearing officer's decision. I point out that the Appeals Panel has not established a standard that notice of injury must be given immediately after the seriousness of the injury is discovered. *See* Texas Workers' Compensation Commission Appeal No. 93711, decided September 10, 1993, *citing* Hawkins v. Safety Casualty Company, 207 S.W.2d 370 (Tex. 1948). Whether the delay in giving notice of injury in this case after the seriousness of the injury was known was unreasonable was a fact question for the hearing officer to determine.

_____
Robert W. Potts
Appeals Judge