

APPEAL NO. 991974

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 16, 1999. He (the hearing officer) determined that the appellant (claimant) sustained a cervical strain in the course and scope of her employment on _____. That determination has not been appealed and has become final under the provisions of Section 410.169. The hearing officer also determined that on November 19, 1998, the claimant advised the employer that she had headaches as the result of pulling on a bolt of fabric on _____; that the claimant did not have good cause for not timely reporting the injury to the employer; and that the respondent (carrier) is relieved of liability because of the claimant's failure to timely notify the employer of the injury. The claimant appealed, contended that she notified the employer of the injury soon after she knew it was work related, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in her favor. The carrier replied, contended that the claimant's testimony was confusing, urged that the evidence is sufficient to support the determinations of the hearing officer concerning timely notice of injury to the employer, and requested that the hearing officer's decision be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a summary of the evidence related to whether the claimant timely notified the employer of the injury and whether the claimant had good cause for not timely notifying the employer of the injury will be included in this decision. The claimant testified that on _____, she was trying to pull a bolt of fabric from a tube; that she felt a twinge down the back of her neck; that she did not have pain that day or that night; that the next day she had a severe headache; that she took over-the-counter pain medications; that the medication did not help; that she decided to go to a doctor because the headaches did not go away; that she went to Dr. A, her family doctor, and was referred to Dr. O'B; that she saw Dr. O'B on November 8, 1998, and Dr. O'B diagnosed a bladder infection and told claimant the infection was causing the headaches; that she spoke with two neighbors who had had aneurisms and from their description of symptoms, she thought she also had an aneurism; that she was trying to deal with the pain and did not associate her headaches with the job; that on November 12, 1998, Dr. O'B told her she had a neck strain; that on November 19, 1998, her supervisor asked about her condition; that they were discussing her headaches; that she remembered it could have happened when she was pulling the fabric out of the tube; that she went to her family doctor and he referred her to Dr. C; and that based on what she told Dr. C, he said it could be job related. The claimant said that she continued to work for the employer.

On November 8, 1998, Dr. O'B diagnosed an urinary tract infection. In a report dated November 12, 1998, Dr. O'B states that when he saw the claimant on November 11, 1998, she was having headaches, nausea, chills, and neck soreness that were thought to be related to fever as a result of the urinary infection; that she was diagnosed as having a cervical spine strain; and that she was given a work excuse for the next day. Dr. O'B's report does not mention a work-related injury. In response to questions of an adjuster, the supervisor stated that the claimant reported the injury to her after the doctor said that it was work related.

In his Decision and Order, the hearing officer wrote:

Claimant asserts that she minimized or trivialized the injury, but that testimony is not credible. Although, as she testified, Claimant may have believed that her headaches were a result of an aneurism, a reasonably prudent person would have associated the chronic headaches to the incident at work which was characterized by a "twinge" in the neck and the onset of the headaches the following morning.

Even if Claimant had trivialized the injury and not associated the incident at work with the headaches, Claimant had been advised of the possible relationship between her headaches and the incident at work by her doctor on the date of the last visit to [Dr. O'B]. The Hearing Officer does not find Claimant's testimony that [Dr. O'B] did not discuss the cause of her headaches and cervical strain to be credible. She did not act as a reasonably prudent person would have under the same or similar circumstances in not giving notice of a work related injury to Employer until October 19, 1999 [sic, November 19, 1998].

The burden is on the claimant to prove by a preponderance of the evidence that she timely reported an injury to the employer. Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994. The testimony of the claimant alone may be sufficient to satisfy the burden of proof. Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 1991. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove a claim, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. The hearing officer determined that parts of the testimony of the claimant were not credible. An appeals level body is not a fact finder, and it does not

normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn factual determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. A claimant is not required to immediately report an injury to the employer upon learning that it may be work related and is required to report the injury to the employer in a reasonable time. The hearing officer considers all of the circumstances in determining whether the injury was reported in a reasonable time. Texas Workers' Compensation Commission Appeal No. 950470, decided May 12, 1995. The record does not indicate that the hearing officer improperly applied the law to the facts and his determinations that were appealed are not 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge