

APPEAL NO. 000370

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 February 1, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable mental trauma injury on _____; whether the claimant reported the injury to the employer within 30 days; whether the claimant timely filed a claim for compensation with the Texas Workers' Compensation Commission (Commission) as required by Section 409.003, and, if not, did good cause exist for failing to timely file a claim; and whether the claimant had disability. The hearing officer determined that the claimant did not sustain a compensable mental trauma injury on _____; that the claimant did not timely report an injury to the employer within 30 days, and good cause did not exist for his failure to do so; that the claimant timely filed a claim for compensation with the Commission within one year after _____, as required by Section 409.003; and that the claimant did not have disability. The claimant appeals all these determinations, requests that the hearing officer's decision be reversed, and attaches a document titled "Rule XVII," for consideration. The respondent (self-insured) replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant has attached to his appeal a document titled "Rule XVII" not offered or admitted into evidence at the CCH. Section 410.203(a)(1) provides that the Appeals Panel shall consider the record developed at the CCH. Consequently, the document that the claimant has attached to his appeal, but not in evidence, will not be considered on appeal. See Texas Workers' Compensation Commission Appeal No. 92400, decided September 18, 1992.

The claimant worked for the employer as a garbage collector. On July 14, 1998, Mr. L, another garbage collector, was assigned to the claimant's route. The claimant testified that Mr. L wanted to work the left side of the garbage truck and he refused to allow this. According to the claimant, this led to an argument, Mr. L threatened to kill him, and a fight ensued. As a result of the fight, the supervisor transferred Mr. L from the claimant's route. The claimant said that on July 16, 1998, and July 27, 1998, he spoke with the superintendent, Mr. H, about the fight, asked to be sent to a doctor because he had developed mental stress and fear of Mr. L because of Mr. L's threat, and Mr. H refused. The claimant signed a letter of resignation on July 24, 1998, which states "I fell [sic] that I'm under extreme [sic] stress. At the present time. Hope too [sic] be back with the [employer] in the future. My discharged [sic] date will be 8-14-98." The claimant asserted that his conversations with Mr. H and letter of resignation constituted notice to the employer of the injury.

The claimant worked from July 24, 1998, until August 14, 1998. According to the claimant, he has not been able to work since August 14, 1998, because of fear and mental stress. The claimant testified that from September 1998 through June 1999, he was too scared to leave his house and seek medical treatment or a job, because he was afraid that he might run into Mr. L and be killed. The claimant sought medical treatment with Dr. E on June 9, 1999, who had treated him for a prior workers' compensation claim. Dr. E issued a note excusing the claimant from work for "job related stress." In a December 1999 report, Dr. E states that the claimant's life was threatened on _____, and that he is emotionally troubled, stressed, and cannot work.

The self-insured presented the testimony of Mr. H to support its position. Mr. H's testimony was in direct conflict with that of the claimant. Mr. H testified that the claimant's supervisor said he saw the claimant with a broken bottle in his hand swinging at Mr. L, that he met with both the claimant and Mr. L after the fight on _____, that the claimant never requested to see a doctor, and that the claimant never told him that Mr. L threatened to kill him or that he was suffering mental stress as a result. Mr. L and the claimant appeared at an unemployment compensation hearing in late 1999, and Mr. L said that at that hearing the claimant did not say anything about suffering work-related stress or sustaining an injury as a result of the incident on _____. Mr. L testified that his first knowledge that the claimant was claiming a work-related injury was approximately 45 days prior to the hearing, when he was asked to complete a supervisor's incident report.

Mental trauma, even without an accompanying physical injury, can produce a compensable injury if it arises in the course and scope of employment and can be traced to a definite time, place and cause. Bailey v. American General Insurance Co., 279 S.W.2d 315 (Tex. 1955); Olson v. Hartford Accident and Indemnity Co., 477 S.W.2d 859 (Tex. 1972). The claimant had the burden to prove that he injured himself as claimed on _____. 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 for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The history of an injury as reported by a claimant and contained in the history portion of medical reports does not necessarily compel a finding that an injury occurred as recited in the history. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ).

The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). The hearing officer considered all of the evidence and determined that on _____, the claimant was involved in a physical altercation at work with a coworker, but that he did not sustain a mental trauma therefrom. The hearing officer resolved contradictions in the evidence against the claimant and determined that the claimant did not meet his burden to prove he sustained a compensable injury. In so determining, the hearing officer notes that nearly everything that the claimant alleged was

contradicted by two or three other items of evidence. When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight 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). We find there was sufficient evidence to support the determination of the hearing officer that the claimant did not sustain a compensable mental trauma injury on _____.

Section 409.001 requires that an employee notify the employer of an injury not later than the 30th day after which the injury occurs. Failure to do so, absent a showing of good cause or actual knowledge of the injury by the employer, relieves the carrier and employer of liability for the payment of benefits for the injury. Section 409.002. The testimony of the claimant that he reported the injury to Mr. H on _____, and July 27, 1998, is in direct conflict with Mr. H's testimony. The letter of resignation filed by the claimant did indicate that he was suffering from stress, but did not indicate that his stress was work related. The hearing officer, after considering all of the evidence, found that the employer was unaware of any alleged work-related injury until the claimant filed his Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) with the Commission on June 15, 1999. Whether, and, if so, when, notice is given is a question of fact for the hearing officer to decide. We find there was sufficient evidence to support the determination of the hearing officer that the claimant did not timely report the injury or establish good cause for failure to give timely notice.

The claimant appealed the hearing officer's finding of no disability. "Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The hearing officer determined that the claimant timely filed a claim for compensation with the Commission within one year after July 14, 1998, as required by Section 409.003. The carrier does not appeal this determination. The claimant purports to appeal it, but since this determination is favorable to the claimant, the claimant is not aggrieved by this determination and has no basis to appeal it.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Judy L. Stephens
Appeals Judge