

APPEAL NO. 000410

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), and is a companion case to our decisions in Texas Workers' Compensation Commission Appeal No. 000188, decided March 10, 2000, and Texas Workers' Compensation Commission Appeal No. 000187, decided March 10, 2000. A contested case hearing, which considered all three dockets, was held on November 15, 1999. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury or occupational disease of hepatitis C on _____; that the claimant without good cause failed to timely report the injury or timely file a claim for compensation; and that the claimant did not have disability. The claimant appeals the timely notice, timely filing and the disability determinations, but not the determination that there was no compensable injury on _____. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence and should be affirmed.

DECISION

Affirmed in part and reversed and rendered in part.

The following background facts are contained in Appeal No. 000188:

The claimant has been a registered nurse since 1988 and before that a licensed vocational nurse. In early 1990, she donated blood. An abnormally high liver enzyme level was detected and, in a letter of March 7, 1990, from the collection center, the claimant was informed that a prior blood donation was also abnormally high. She was advised to see her physician and told she was no longer eligible to donate blood. In a letter of May 4, 1990, the blood center advised her of a research program testing for antibodies to the hepatitis C virus and that in the past she "had an infection with this virus." It was again recommended to her that she see her doctor "regarding hepatitis C."

On May 25, 1991, while working in the emergency room, the claimant stuck herself with a needle. The incident occurred as she was disposing of a syringe in a container. The container was above her head and already full of needles. She could not readily appreciate any exposed needles sticking out of the container and stuck herself with one of those needles. Nor could she identify the particular needle or what patient the needle was used on. She immediately reported the incident to her supervisor [footnote omitted] and submitted a blood sample which tested negative for drugs, HIV, and "acute hepatitis profile." The claimant continued working. In October 1997, the claimant made an autologous blood donation in connection with a pending operation for a non work-related condition. The blood tested positive for hepatitis C. A liver biopsy on February 18, 1998, confirmed that she had a

chronic hepatitis C infection and she began treatment with Dr. C. She was terminated from her employment on August 13, 1998.

At a pre-hearing session on October 12, 1999, the carrier pointed out that there had been no benefit review conference in connection with its possible liability in this case, that the carrier had established no claims file during its period of coverage; and that it had just received the pertinent documents. Apparently, as of this time, there was no assertion of a date of injury during the period of its coverage of the employer (January 1, 1993, to January 1, 1996). In the interests of making the carrier a formal party to these proceedings and to ensure that if the claimant was pursuing a theory of recovery based on an occupational disease all carriers who provided coverage during the claimant's employment from 1991 to her termination in 1998 would be present, the hearing officer suggested that the claimant file an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) "to create a file with an injury date during the coverage period of [carrier]." The claimant, through her attorney, did as requested and completed a TWCC-41 on October 12, 1999, which asserted a date of injury of _____. At the same time, the claimant admitted that this was an arbitrary date to bring the carrier into the proceedings formally as a party and that this date had no other significance. Consistent with these assertions and the lack of any other evidence to support a finding of an injury with a date of injury of _____, under any theory of liability, the hearing officer found that on _____, the claimant was not injured (by a needle stick) and that any alleged injury of this date was not a producing cause of the claimant's hepatitis C. The claimant has not appealed this determination and we affirm it together with the finding that there was no disability based on a needle stick occurring on _____, or producing hepatitis C.

The hearing officer also found no timely notice of the injury within 30 days of _____, and no good cause for the untimely notice. Disregarding the unusual way in which this date became a date of the claimed injury, and given that the claimant is claiming a hepatitis C infection as her compensable injury and that she did not receive this diagnosis until late 1997, we question the hearing officer's failure to find good cause. Similarly, the hearing officer found that the time for filing a claim for compensation was tolled until August 13, 1998, when he found (erroneously, *see* Appeal No. 000187, *supra*) that the carrier filed a Employer's First Report of Injury or Illness (TWCC-1), but that the claimant did not file her TWCC-41 for more than a year thereafter, that is on October 12, 1999, and hence the filing was untimely and without good cause.¹ Again, given the circumstances of how a date of injury of _____, arose in this case and the hearing officer's "suggestion" at the October 12, 1999, pre-hearing session to file a TWCC-41 with this date of injury, none of which matters were addressed in the decision and order on the issue of good cause, we question how the hearing officer could have arrived at these determinations. In light of the unusual procedural history of this case, we reverse the no-good-cause determinations and render a decision that good cause existed for both the late filing of a claim and late reporting of an injury with an alleged date of _____.

¹These findings appear grossly inconsistent with the resolution of parallel issues in Appeals No. 000187 and 000188.

For the foregoing reasons, we affirm the findings of no compensable injury with a date of injury of _____, and no disability. We reverse the findings of no good cause for untimely filing and untimely reporting of an injury under this date and render a decision that the claimant had good cause for not timely filing a claim for compensation and not timely reporting an injury under this date of injury. Given the affirmance of the findings on compensability, there is no practical benefit to the claimant from this reversal.

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Elaine M. Chaney
Appeals Judge