

APPEAL NO. 000489

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 3, 2000, a hearing was held. The hearing officer determined that appellant (claimant) sustained an injury in the course and scope of employment on \_\_\_\_\_, but did not timely notify her employer, without good cause for being late, and employer did not have actual knowledge of the injury; he also concluded that claimant did not have disability. Claimant asserts that she did notify her supervisor on \_\_\_\_\_, that she could not work because of pain from her fall the day before; she also says that she was taken off work for her injury. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on \_\_\_\_\_. She held a position as a "leak checker" as a probationary employee when she slipped and fell at work. According to claimant, the floor was uneven and she fell forward, falling on her elbows. The hearing officer found that claimant sustained an injury in the course and scope of employment.

The basis of the appeal is the determination that timely notice was not given. One of claimant's supervisor's, Mr. K, was working nearby on a piece of machinery on a table and saw a falling movement out of the corner of his eye as claimant turned a corner away from him; in a video in evidence, he said she appeared to fall to the side onto her right arm. At the hearing Mr. K testified that he went to her side and asked, through a translator, if she were all right. Mr. K said that she replied that she was fine; she went back to work. He noticed no scrapes or bruises on her arms. On cross-examination, Mr. K agreed that most people say they are all right after falling. He added, "that's why I watch them afterwards." When then asked if he had medical training, he said, "yes," as an emergency medical technician. He agreed that claimant could have been hurt, but said he did not see it in her facial expressions or body movement. He also characterized claimant as a good employee when present but said she, "along with several other employees, had attendance problems." When she did not appear for work, "sometimes" she would call in.

Claimant said that she did not go to a doctor right away because "nobody asked me how I felt." She then said that when she returned to working, "W" ([Mr. R]) asked her if she was all right and she said, "right at this moment I don't feel bad." She said that she reported an injury the next day to Mr. R, testifying, "I told him that I couldn't go to work, my arms were hurting after the fall." She said that Mr. R told her to stay home until she felt better.

Claimant did not seek medical care until July 20, 1999; she along with "about 20" others had been laid off on July 14, 1999. According to Mr. B, personnel manager for employer, claimant asked for an accident report within a week after the lay off, saying that

she had been injured on \_\_\_\_\_. The statement of Mr. R said that Mr. K had asked him to keep an eye on claimant; he said he asked her if she was okay; he indicated that she said she was not in any pain. He added that she never did complain. He added that two or three weeks later she said that she was not going to come to work because she was going to see a doctor, saying she did not feel right. He said he did not relate that to the fall. He did say then that she said she had a little pain in her arms but she did not indicate that was connected to the accident. Mr. R said that claimant did not take time off from work except for a two-week period when she went to visit relatives in Mexico. She worked until July 14, 1999, when laid off.

After seeing Dr. S on July 20, 1999, claimant later began seeing Dr. R, on August 23, 1999.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The statement of Mr. R and claimant's testimony presented conflicts in the evidence as to whether claimant gave notice of an injury on May 5, 1999. The hearing officer could credit Mr. R's statement that said claimant only reported going to a doctor several weeks later, which Mr. R did not correlate to the fall and which claimant did not tie to the fall. He could consider that there was no medical record from any doctor, prior to July 20, 1999, to show that Mr. R was mistaken, or correct, as to the length of time after the fall that claimant commented about pain in her arms. While the hearing officer could have made an inference that Mr. R's reference to claimant's pain in her arms was connected to the earlier fall, he did not have to make that inference. There was no testimony that claimant was observed to have had trouble working or had changed her movement or use of her arms in the weeks and months following the fall; there was some testimony that she was being watched to see if she was all right. In Miller v. Texas Employers' Insurance Association, 448 S.W.2d 489 (Tex. Civ. App.-Beaumont 1972, writ ref'd n.r.e.), the court held that a question of fact was presented, as to actual knowledge, when a worker fell from a truck, his supervisor knew of the fall, the worker said nothing about being injured, but his work thereafter was observed to "slow down." In the case under review, the hearing officer, as fact finder, dealt with the factual question presented by finding that notice was not provided in any manner. The evidence was sufficient to support that determination.

With the hearing officer concluding that claimant did not sustain a compensable injury, no disability was found. Whether the injury is considered to be compensable or not because notice in one form or another was not provided, the carrier is not liable for benefits because notice requirements addressed in Sections 409.001 and 409.002 were not met.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta  
Appeals Judge

CONCUR:

Robert W. Potts  
Appeals Judge

Tommy W. Lueders  
Appeals Judge