

APPEAL NO. 000516

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 16, 2000. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on _____; whether the claimant had disability; and whether the appellant (carrier) is relieved of liability under Section 409.002 because of claimant=s failure to timely notify the employer of the injury pursuant to Section 409.001. The hearing officer determined that the claimant sustained a compensable injury and had disability beginning October 8, 1999, and continuing through December 22, 1999; and that carrier is not relieved of liability because of claimant=s failure to timely notify the employer because the employer had actual knowledge of the injury. The carrier appeals, requesting that we reverse the hearing officer=s decision and render a decision in its favor. The claimant responds, urging affirmance.

DECISION

Affirmed in part, reversed and rendered in part.

The claimant testified that on _____, she attended a meeting with (Mr. M) from human resources, and Mr. L, her supervisor. The employer called the meeting and the purpose of the meeting was to take disciplinary action against the claimant based on allegations that she had threatened and harassed coworkers. The claimant said that at that meeting, Mr. M asked her to promise not to kill or harass anyone at work and when she refused, Mr. M asked her to turn in her badge, and both Mr. M and Mr. L escorted her down a hallway to exit the building. The claimant testified that as she was walking down the hallway, Mr. M and Mr. L were on each side of her; that she began to feel strange and lose her balance; that Mr. M opened the door and she fainted at the same time as the door hit her right shoulder; that she lost consciousness and woke up on the floor with emergency medical services (EMS) present; that she hit her head, hip and back in the fall; and that EMS did not examine her and left.

The claimant sought medical treatment at SPC on October 8, 1999. The claimant testified that she sought treatment because her whole body was aching, she could not hear, and she could not hold her head up. The chart notes from SPC state that the claimant *Afell yesterday,@* is depressed, has back pain, and was referred to Mental Health Mental Retardation. According to the claimant, she continued to have pain and balance problems and she went to (hospital) on October 18, 1999. The hospital records indicate that the claimant was having episodes of vertigo and *Afell two weeks ago@* because of a loss of balance. On October 29, 1999, the claimant sought medical treatment with a chiropractor, Dr. K. Dr. K=s records state *Apatient reports that she was in a stressful meeting and as the patient was leaving the meeting she fell in the hallway and hurt her back, neck and arms.@* Dr. K took the claimant off work and prescribed six weeks of physical therapy and manipulation.

The carrier presented the testimony of Mr. M and Mr. L to support its position that the claimant did not sustain an injury on _____. Mr. M testified that as the claimant was walking down the hallway, she threw her hands up, and began to fall; that Mr. L stepped forward and caught her fall; that the claimant did not appear to faint or lose consciousness; that the claimant's body did not hit the ground; that the claimant was not hit by a door; and that the claimant was rambling and not making any sense. According to Mr. M, EMS examined the claimant, asked her what was wrong, and claimant kept responding "they don't like my face, they think I am ugly and old." Mr. M said that EMS told him that the claimant's problems were not physical, and that there was nothing wrong with her. Mr. M testified that the claimant's employment was not terminated on _____, and that he had several communications with her after that date in which the claimant did not mention an injury. According to Mr. M, his first knowledge that the claimant was asserting a work-related injury was in mid-November 1999. Mr. L testified that he caught the claimant as she was falling and laid her on the ground; that the claimant did not lose consciousness; that the claimant was not hit by a door; that EMS examined the claimant and found nothing physically wrong; and that EMS said the claimant needed counseling.

The claimant had the burden to prove that she injured herself as claimed on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.- Texarkana 1961, no writ). Whether she 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. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer resolved contradictions in the evidence for the claimant and concluded that the claimant did sustain damage or harm to the physical structure of her body in the course and scope of her employment on _____. The hearing officer states that the claimant suffered dizziness, lost control of her body and fell to the floor, although this is contradicted by the testimony of Mr. M and Mr. L.

The carrier asserts that if the claimant sustained an injury, it was the result of a legitimate personnel action and is not compensable pursuant to Section 408.006. Section 408.006(b) provides that "[a] mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury. . . ." Because this case does not involve a claimed mental trauma injury, Section 408.006 is not applicable.

The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9,

1995. Our review of the record does not reveal that the hearing officer's determination that the claimant sustained damage or harm to the physical structure of her body in the course and scope of her employment on _____, is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Although another fact finder could have drawn different inferences from the evidence of record, which would have supported a different result, that does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

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. Not appealed is the hearing officer's finding that the claimant did not report her injury to the employer within 30 days after the injury. The hearing officer found that the employer had actual knowledge of the injury on _____, having observed the claimant's fall and subsequent actions. In so determining, the hearing officer states:

The Human Resources manager and Claimant's supervisor saw the fall, and stayed with her while she was examined by [EMS]. Simply saying that [EMS] did not find any physical injuries at the time of their examination does not negate actual knowledge. They saw the fall, saw the Claimant's eyes roll back, heard her incoherent mumbling, and a reasonable person would have known that she had suffered some harm.

In Texas Workers' Compensation Commission Appeal No. 931006, decided December 17, 1993, the Appeals Panel stated that generally actual knowledge of an injury is a fact question and that the claimant has the burden of proof to show that the employer had facts that would lead a reasonable person to conclude that a compensable injury had been sustained by the claimant in the accident which the claimant's supervisors witnessed. In Appeal No. 931006, the claimant's supervisors saw him fall, get up, dust himself off, and then go back to work. When asked, the claimant said that he was okay. The claimant continued to work without complaining to his superiors, there was no evidence that his work slowed, and for two months the claimant did not lose any time from work or seek medical attention. The Appeals Panel affirmed the determination of the hearing officer that the employer did not have actual knowledge of the injury. Knowledge of the fall alone was not sufficient to convey actual knowledge to the employer that the claimant had sustained an injury.

The carrier's appeal argues that the employer had knowledge of the claimant's fainting spell on _____, but did not have knowledge of an injury to her neck, back and shoulder. There was no evidence presented to indicate that EMS found any physical injuries, or that the claimant complained of any physical injuries on _____. The claimant did not return to

work after _____, and did not testify to any subsequent conversations with the employer after that date. Mr. M testified that the claimant did not return to work after _____, that he told her she was still employed, and that the claimant did not mention an injury. A reasonable person would not have concluded that the claimant had suffered an injury based upon the events of _____. Given that EMS did not find any physical injuries and the claimant did not complain of any physical injuries on _____, the hearing officer's determination that the employer had actual knowledge of the injury is so contrary to the great weight of the evidence as to be clearly wrong and unjust. *Cain, supra*. We reverse the decision of the hearing officer that the carrier is not relieved from liability under Section 409.002, because of claimant's failure to timely notify the employer pursuant to Section 409.001, since the employer had actual knowledge of the injury, and render a decision that the carrier is relieved from liability under Section 409.002 because the claimant did not notify the employer of the injury not later than the 30th day after the date of the injury and the employer did not have actual knowledge of the claimant's injury.

The hearing officer determined that the claimant sustained an injury in the course and scope of her employment; however, because the carrier is relieved from liability under Section 409.002, the injury is not compensable. See Texas Workers' Compensation Commission Appeal No. 951341, decided September 27, 1995. Accordingly, we reverse the hearing officer's decision that the claimant sustained a compensable injury on _____, and that the claimant had disability beginning October 8, 1999, and continuing through December 22, 1999, and render a decision that the claimant did not sustain a compensable injury on _____, and did not have disability.

We affirm the hearing officer's determination that the claimant sustained damage or harm to the physical structure of her body in the course and scope of her employment on _____. We reverse the hearing officer's decision that the claimant sustained a compensable injury on _____; that the carrier is not relieved from liability under Section 409.002, because of the claimant's failure to timely notify the employer pursuant to Section 409.001, since the employer had actual knowledge of the injury; and that the claimant had disability from the compensable injury beginning October 8, 1999, and continuing through December 22, 1999; and render a decision that the claimant did not sustain a compensable injury on _____; that the carrier is relieved from liability under

Section 409.002 because the claimant did not notify the employer of the injury not later than the 30th day after the date of the injury and the employer did not have actual knowledge of the claimant's injury; and that the claimant did not have disability because she did not sustain a compensable injury.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge