

APPEAL NO. 000595

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 29, 2000. The hearing officer determined that the appellant (claimant) sustained a repetitive trauma occupational disease; that the date of injury was _____; that the claimant without good cause failed to give the employer timely notice of the injury thus relieving the respondent (carrier) of liability for benefits; and that the claimant did not have disability because the injury was not compensable. The claimant appeals the determination that she did not have good cause for not timely reporting the injury, contending that this determination was an abuse of discretion and contrary to the great weight and preponderance of the evidence. The carrier replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Reversed and remanded on the appealed issue.

The sole matter raised by the claimant on appeal is that the hearing officer erred in finding no good cause for the delay in the reporting of the claimant's occupational disease. Under these circumstances, the findings that the claimant sustained an injury in the nature of an occupational disease; that the date of this injury was _____; and that the claimant did not report the injury to her employer by the 30th day after the date of injury are binding on us and the parties.¹

Sections 409.001 and 409.002 generally provide that failure to give timely notice of an injury relieves the employer and carrier of liability for benefits unless the Texas Workers' Compensation Commission (Commission) determines that "good cause exists for failure to provide notice in a timely manner[.]" The test for good cause is that of ordinary prudence, that is, whether the employee has prosecuted the claim with the degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances. Hawkins v. Safety Casualty Company, 207 S.W.2d 370 (Tex. 1948). Trivialization of an injury, that is, the good faith to believe that the injury is minor or trivial, can be a basis for a finding of good cause. See Texas Workers' Compensation Commission Appeal No. 94936, decided August 23, 1994. We have also observed that good cause must generally exist up to the time the injury is reported, but the reporting need not necessarily be done immediately upon the end of the good cause. See Texas Workers' Compensation Commission Appeal No. 941471, decided December 14, 1994.

¹Curiously, the report of the benefit review conference admitted as Hearing Officer's Exhibit No. 1 states that the conference was held on February 28, 1999, not December 28, 1999, as stated in the decision and order and that the issue of date of injury was addressed and agreed by the parties to be February 2, 1999. Under these circumstances, one questions why this had to be added as an issue at the CCH or why it was an issue at all.

At the CCH, the claimant relied on theories of both timely reporting of the injury and good cause for untimely reporting based on trivialization of the injury. In Finding of Fact No. 4, the hearing officer simply found that the claimant did not have good cause for not timely reporting the injury and essentially reiterated this finding in Conclusion of Law No. 5. There were no other findings of fact or discussions in the decision and order which addressed the claimant's contention of trivialization. In Texas Workers' Compensation Commission Appeal No. 970876, decided June 27, 1997, a case dealing with supplemental income benefits, we stressed that when a dispute is litigated on a particular point, findings of fact should be made which address that point. We further stated in Texas Workers' Compensation Commission Appeal No. 972140, decided December 3, 1997, that there must be "some basis or rationale based on the evidence presented for the decision reached rather than an ultimate conclusion."

This latter case can be read as standing for the proposition that parties are entitled both in decisions and orders of hearing officers and in decisions of the Appeals Panel to be informed of the reasons why a given disposition of an issue was reached. In the case we now consider, the claimant asserted good cause based on trivialization. However, no findings were made that the claimant did or did not trivialize this injury more or less up to the time she reported it and we are unable to determine whether the hearing officer considered this position. For this reason, we reverse the determination that the claimant did not have good cause for not timely reporting her injury, we remand this issue for further findings of fact and conclusions of law based on the existing record which expressly address and resolve the question of whether the claimant trivialized this injury and, if so, whether such trivialization did or did not constitute good cause for not otherwise timely reporting the injury.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge