APPEAL NO. 000747

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 March 10, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury; the date of the claimant=s injury; whether the respondent (carrier) is relieved from liability pursuant to Section 409.002 because of the claimant=s failure to timely notify the employer pursuant to Section 409.001; and whether the claimant had disability. The hearing officer determined that the claimant did not sustain an injury at work on _____; that the claimant failed to notify the employer of the alleged injury, relieving the carrier of liability for benefits; and that the claimant did not have disability. The claimant appeals, urging that he sustained a compensable injury; that he had good cause for failing to report the injury timely; and that he had disability from June 1999 through April 2000. The carrier replies that the hearing officer=s decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant worked for the employer as a journeyman electrician. The claimant testified that on _____, he lost his footing walking down the stairs of a trailer and fell to the ground, and this was witnessed by Mr. H and Mr. R. The claimant said that on _____, his supervisor, Mr. S, asked him if he was hurt, he said that he did not think so, and said that he had numbness in his left leg and arm. On November 29, 1998, the claimant sought emergency medical treatment for numbness in his hands and legs. The medical records indicate that the claimant was diagnosed with possible diabetic neuropathy. The claimant was off work three days and testified that around the first or second week of December, he told Mr. S that he had sought medical treatment because of the fall and that his left shoulder was hurting. The claimant continued working for the employer until there was a layoff in early February 1999.

On March 5, 1999, the claimant sought emergency medical treatment for pain in his left shoulder, and was diagnosed with tendonitis. The claimant sought medical treatment with Dr. B on March 23, 1999. The claimant testified that Dr. B told him that the numbness was probably caused by his diabetes. Dr. B=s notes from March 23, 1999, state that the claimant complained of numbness in his left hand, numbness in his left foot, and pain in the left shoulder, and that claimant Afell at work x 3 mos ago (not w/c).@ Dr. B referred the claimant to other doctors and diagnostic testing was performed. On May 19, 1999, Dr. B=s records state that the claimant had shoulder pain, left carpal tunnel syndrome and bilateral leg weakness, and that he concluded such problems were not caused by either diabetes or peripheral circulation. A left shoulder MRI performed on December 1, 1999, revealed impingement with tendonitis and edema of the tendon and distal muscle.

On June 22, 1999, the claimant called the employer, reported that he had injured his left shoulder when he fell in _____, and said that he had reported this to Mr. S. When asked on cross-examination why he called the employer on that date, the claimant said Adoctors had me going back and forth telling me that it was diabetic neuropathy, so I had a bunch of tests done. That was one of the reasons it took so long to report the injury to get to [the employer], because the whole time I thought it was diabetic neuropathy like they kept telling me.@ Mr. S testified that his first knowledge that the claimant was claiming a work-related injury was in August 1999, and that he did not recall the claimant ever mentioning a fall or an injury. According to Mr. S, had an injury been reported, he would have filed the appropriate paperwork.

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. 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 was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). He resolved contradictions in the evidence against the claimant and concluded that claimant lost his footing and fell to the ground on _____, but that he did not sustain any damage or harm to the physical structure of his body. 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 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 or, if the injury is an occupational disease, the date the employee knew or should have known that the injury may be related to the employment. 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. Good cause must continue up to the date when the claimant actually notifies the employer. Texas Workers' Compensation Commission Appeal No. 93649, decided September 8, 1993.

The hearing officer, after considering all of the evidence, found that the claimant did not report the alleged injury until June 22, 1999; that the claimant had good cause for failure to give timely notice to the employer until March 23, 1999, when he sought treatment with Dr. B; and that the claimant did not have good cause continuing up until June 22, 1999. The hearing officer did not find the claimant=s testimony persuasive that he gave notice of an injury within 30

days of _____. Whether, and, if so, when, notice is given, and whether good cause exists 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 carrier is relieved from liability pursuant to Section 409.002 because of failure by the claimant to timely notify the employer of an injury in accordance with Section 409.001.

The claimant appealed the hearing officer's finding of no disability. 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 decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge