APPEAL NO. 000878

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 3, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) sustained a work-related injury in the form of an aggravation to a pre-existing abdominal hernia on _____; that the claimant did not timely report his injury to his employer; and that the claimant was unable to obtain and retain employment at his preinjury wage as a result of his _____ injury in the course and scope of his employment from May 28 to July 8, 1999. In his appeal, the claimant essentially argues that each of those determinations is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was working as a shop foreman/equipment operator for (employer). He stated that on that date he was moving a heavy wood beam, when he slipped on the wet floor and fell. The claimant testified that shortly after his fall, he reported his injury to his supervisor, Mr. M, and that his coworker, Mr. TC, was present during the conversation where the claimant reported his injury to Mr. M on _____. The claimant stated that he was scheduled to work on (day after injury) but that he was not physically able to do so; thus, he called the employer and spoke to Ms. M, another supervisor with the employer, and told her that he thought he had a hernia and that the hernia had happened when he slipped and fell at work carrying the beam.

Mr. TC testified that he worked with the claimant on _____ and that he saw him slip in fluid on the floor and fall to the ground while he was carrying a heavy piece of wood. In addition, Mr. TC stated that he specifically heard the claimant report his injury to Mr. M on the afternoon that it happened. Mr. WC, Mr. TC's father and the claimant's roommate, testified that on _____, the claimant came home from work complaining of "stomach pains" and told Mr. WC that he had slipped and fallen carrying a heavy piece of wood at work that day. Mr. WC stated that on Saturday, (day after injury), the claimant showed him a "huge lump" on his abdomen, which Mr. WC thought was a hernia. Mr. WC stated that he was present when the claimant called Ms. M and told her that he would not be in to work that day and that he had hurt himself at work the day before.

Ms. M testified that the claimant did not tell her in a conversation on (day after injury), that he had hurt himself at work on _____. She stated that she first became aware that the claimant was alleging that he sustained a work-related injury on July 1, 1999, when the claimant faxed a letter to the employer to that effect. Mr. M also denied

that the claimant reported a work-related injury to him on _____, insisting that he received his first notice that the claimant was alleging an on-the-job injury on July 1, 1999.

In his appeal, the claimant asserts error in the hearing officer's determination that he did not timely report his injury to his employer, emphasizing his testimony and the testimony of Mr. TC and Mr. WC, who each stated that they overheard the claimant report his injury to Mr. M and Ms. M, respectively. The question of whether the claimant timely reported his injury to his employer presented a question of fact for the hearing officer to resolve. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. 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. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). As noted above, the testimony of Mr. M and Ms. M was directly contrary to that of the claimant, Mr. TC and Mr. WC. The hearing officer was acting within his province as the fact finder in resolving the conflict in the evidence against the claimant and in determining that the claimant did not report that he had a work-related injury to his employer until July 1, 1999. Nothing in our review of the record reveals that that determination is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust and, as such, no sound basis exists for us to reverse the hearing officer's notice determination, or his determination that the carrier is relieved of liability in this case pursuant to Section 409.002 because of the claimant's failure to timely report his injury, on appeal.

In his appeal, the claimant also contends that the hearing officer erred in finding that he had an aggravation of a pre-existing hernia rather than a new hernia and in determining that he only had disability for the period from May 28 to July 8, 1999. Because we have affirmed the hearing officer's determination that the carrier is relieved of liability for workers' compensation benefits in this case, no remedy is available even in the event that the hearing officer erred in making those determinations. Moreover, the hearing officer's determination of injury is favorable to the claimant even if the claimant disagrees with the theory. Accordingly, no purpose would be served in further consideration of those issues.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge