

APPEAL NO. 000976

On April 12, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that appellant (claimant) did not sustain a compensable injury on _____; that claimant did not timely report his alleged compensable injury to his employer; that claimant did not have good cause for failing to timely report his alleged compensable injury to his employer; and that claimant has not had disability. Claimant requests that the hearing officer's decision on all issues be reversed and that a decision on all issues be rendered in his favor. Respondent (self-insured) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

Claimant, a registered nurse, testified that he had a work-related back strain in 1993 when he lifted a patient while working for self-insured. Claimant testified that he again injured his back lifting a patient on _____, while working for self-insured and that he reported his current injury to his supervisor, MR, on November 29, 1999. MR testified that she first learned that claimant was claiming a work injury on January 17, 2000, when claimant completed an incident report. Claimant went to Dr. K for lower back and right leg pain on December 14, 1999, and Dr. K's notes of that date do not state how claimant was injured. Dr. K took claimant off work and referred him to physical therapy. The physical therapist wrote that claimant could not recall an incident causing his back and leg pain. An MRI of claimant's lumbar spine done on December 29, 1999, showed a disc herniation at L5-S1 which compresses the right S1 nerve root. Dr. K referred claimant to Dr. A, who wrote on January 14, 2000, that claimant was complaining of back pain that radiates to his right leg for the last month and that he denied any recent trauma. Dr. A wrote that claimant is a surgical candidate but that claimant wanted to continue conservative care. Dr. A wrote in February 2000 that claimant said his injury probably occurred on _____, when lifting a patient, and Dr. A wrote in March 2000 that within reasonable medical probability claimant's herniated disc and problems are an aggravation of his injury of _____. Dr. K wrote in March 2000 that within reasonable medical probability claimant's current diagnosis is related to the accident that occurred five years ago and that claimant suffered a flare-up on _____.

Injury, compensable injury, and disability are defined in Sections 401.011(26), (10), and (16), respectively. Notice of injury must be given to the employer within 30 days of the injury. Section 409.001(a). If it is determined that an injured employee had good cause for failing to timely notify his employer of an injury, then the carrier is not relieved of liability under Section 409.002. Claimant had the burden to prove that he was injured in the course and scope of his employment, that he gave timely notice of injury to his employer or had good cause for failing to timely report the injury, and that he had disability. The hearing officer found that on _____, claimant did not sustain an injury while he was

engaged in the exercise of his job duties with self-insured; that within 30 days of _____, claimant did not report to anyone in a supervisory capacity with employer that he had been injured within the course and scope of his employment on _____; that claimant failed to act as a reasonably prudent person in not reporting his alleged injury of _____, within 30 days of its alleged occurrence; and that claimant's inability to obtain and retain employment at wages equivalent to the wage he earned before _____, is not the result of a compensable injury of _____. The hearing officer concluded that claimant did not sustain a compensable injury on _____; that claimant did not timely report his alleged compensable injury of _____; that claimant did not have good cause for failing to timely report his alleged compensable injury of _____; and that claimant has not had disability. Without a compensable injury, claimant would not have disability as defined by Section 401.011(16). With regard to information contained in the Employer's First Report of Injury or Illness (TWCC-1), Section 409.005(f) provides that a report required under Section 409.005 (Employer Report of Injury) may not be considered to be an admission by or evidence against an employer or an insurance carrier in a proceeding before the Texas Workers' Compensation Commission or a court in which the facts set out in the report are contradicted by the employer or insurance carrier. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). There is conflicting evidence in this case and it was the hearing officer's responsibility as the trier of fact to resolve the conflicts in the evidence and to determine what facts had been established from the evidence presented. We conclude that the hearing officer's decision on all issues is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge