

APPEAL NO. 001178

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 May 2, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury to her lumbar spine on _____; that the respondent (carrier) is relieved from liability because of the claimant's failure to timely notify her employer; and that the claimant did not have disability. The claimant appeals, urging that the hearing officer's decision is against the great weight and preponderance of the evidence. 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's clothing store as a salesperson. The claimant testified that she injured her lower back on _____, when she moved a marble table at the direction of the store manager, Ms. O, her sister. According to the claimant, she told Ms. O on _____, that she injured her back moving the table and missed a week of work following the injury.

The claimant sought medical treatment in (state), on June 14, 1999, and was diagnosed with a lumbar strain. The claimant returned to work on June 16, 1999, and worked until August 31, 1999, when she left employment after Ms. O was fired. The claimant has been diagnosed with a lumbosacral strain and possible lumbar herniated disc. The claimant testified that she has been unable to work as a result of her back injury from November 27, 1999, through the date of the hearing.

The claimant presented the testimony of Ms. A, and Ms. R. Ms. A testified that she moved a marble table with the claimant on _____; that the claimant reported an injury on _____; and that she told a co-owner of the store, Mr. A, on June 11, 1999, that the claimant had reported an injury. Ms. A, a co-owner of the store, testified that she was aware that the claimant had a prior back injury. Ms. A said that between _____, and August 31, 1999, the claimant worked her regular job duties; showed no signs of injury; and did not report a work-related injury. Ms. R, a coworker, testified that a table was moved on _____, and that the claimant complained that she had injured her back moving the table. The carrier presented the testimony of Mr. A, who testified that he had no knowledge that the claimant was claiming a work-related injury until after she left employment on August 31, 1999.

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). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). She noted that there were many

inconsistencies between the claimant's testimony, the witnesses' testimony, and the documentary evidence. The hearing officer concluded that claimant did not sustain an injury to her lumbar spine in the course and scope of her employment on _____. 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 to her lumbar spine on _____.

Section 409.001 requires that an employee notify the employer of an injury not later than the 30th day after the date on 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. Conflicting evidence was presented as to when the claimant reported the injury to the employer. The hearing officer, after considering all of the evidence, found that the claimant reported the injury to the employer on or about November 11, 1999, and failed to show good cause for her failing to timely report her injury. Whether, and, if so, when notice is given 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 under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001.

The claimant appealed the hearing officer's finding of no disability. Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). 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:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge