

APPEAL NO. 001192

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 8, 2000. The hearing officer determined that the appellant (claimant) sustained a work-related injury in the form of an occupational disease on _____; that the claimant, without good cause or legal excuse, did not timely report the injury; and that claimant did not have disability. The claimant appealed the timely notice and, by inference, disability determinations, expressing his disagreement with them. The respondent (carrier) replied that the decision of the hearing officer was correct, supported by sufficient evidence, and should be affirmed. The finding of a work-related injury has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

It is unclear why this claimed inguinal hernia injury was phrased as an occupational disease/repetitive trauma injury. In any case, the claimant contended that his date of injury was _____, and the hearing officer found accordingly. The claimant also does not appeal the determination of the hearing officer that he did not report the injury by the 30th day after the date of injury. See Section 409.001. The hearing officer found that the claimant did not report the injury until May 17, 1999, and had good cause for the failure to report the injury only up to May 3, 1999. The hearing officer also found that the employer did not have actual knowledge of the claimed injury until it was reported on May 17, 1999.

In his appeal, the claimant expresses his disagreement with these adverse determinations. The claimant testified that sometime around _____, he felt abdominal pain after moving some plywood. He saw Dr. W, the employer's doctor, on several occasions thereafter but Dr. W was not able to find or diagnose a hernia. The claimant also saw Dr. B, his family doctor, in November 1998 for an annual physical examination. Dr. B was also unable to find or diagnose a hernia. At the claimant's request, Dr. B referred the claimant to Dr. Z, who, on May 3, 1999, diagnosed a right inguinal hernia. The next day, the claimant returned to the employer's health clinic. His position was that at this visit, he reported his injury to his employer. Dr. W's note of this visit states that the claimant was told "he has a re-occurrence of an old hernia repair (30 years ago while working for another company)." He was told to call the carrier for that 30-year-old injury. Also in evidence were a nurse's notes of a May 13, 1999, visit to the employer's health clinic. These reflect that the claimant said Dr. B told him "if this was work related he needs to go back & tell his employer and see a dr. that takes workers' comp." Further discussions about benefits were held and the nurse wrote that "I told [claimant] he would have to tell me what work he was doing when he noticed the problem and I would need to know a date in order to file a claim with the insurance carrier. [Claimant] said he was not going to tell me a lie because he did not know if this was work related or not." A nurse's notes of a visit on May 17, 1999, stated that the claimant

reported he wanted "to file his hernia on worker's comp. but will have to think of a date. States he is not sure of when he got hurt."

The claimant's position was that he reported his claimed hernia injury on May 4, 1999, and that his good cause for untimely reporting the injury continued until then. See Texas Workers' Compensation Commission Appeal No. 941471, decided December 14, 1994, and Texas Workers' Compensation Commission Appeal No. 93677, decided September 21, 1993, for a discussion of the requirement for continuing good cause to excuse an untimely report more or less up to the time notice is actually given. To satisfy the purpose of the notice of injury requirement, the employer need be informed only of the general nature of the injury and the fact that it is job related. DeAnda v. Home Insurance Company, 618 S.W.2d 529 (Tex. 1980). Whether, and, if so, when, notice is given is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994. In this case, the evidence of notice on May 4, 1999, was arguably ambiguous in terms of the claimant relating the hernia to the current employment. There was evidence that even as of May 13, 1999, the claimant still did not know if his hernia was related to his current employment. The claimant testified that he did communicate to his employer his belief that his hernia was related to the current employment and that the employer had actual knowledge that the injury occurred in this employment.

While he found good cause up to May 3, 1999, which presumably could be extended to May 4, 1999, the hearing officer was not persuaded by the evidence in this record that on May 4, 1999, the claimant communicated his belief that his hernia was caused by his current employment some nine months before. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. As fact finder, his responsibility was to weigh the evidence and determine what facts had been established. Clearly, the evidence was subject to varying inferences. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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). Applying this standard of review to the record of this case, we cannot say that the hearing officer's decision lacks sufficient evidentiary support in the record. We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite

to a finding of disability. Section 401.011(16). For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Dorian E. Ramirez
Appeals Judge