

APPEAL NO. 001233

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 May 16, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury, she did not have disability, and the carrier (respondent) is relieved from liability under Section 409.002 because the claimant failed to timely notify the employer of her alleged injury. The claimant appeals, urging that the hearing officer's decision is against the great weight 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 as a quality control lead. The claimant sustained a compensable injury to her neck, shoulder and wrist on _____, and received medical treatment. On September 7, 1999, the claimant changed treating doctors and began treatment with Dr. T at (Clinic). Dr. T's records on September 7, 1999, indicate that the claimant had complaints of neck, right shoulder, lower back, and right wrist pain. Dr. T diagnosed the claimant with a cervicothoracic strain, right shoulder strain, lumbothoracic strain, right wrist/hand strain, and spasm.

The claimant testified that she never complained of back pain to any doctor prior to _____, when she sustained a lower back injury lifting speakers. According to the claimant, she reported the injury to her supervisor, (Mr. A), and continued working. The claimant sought medical treatment with Dr. T on October 14, 1999. Dr. T's records reflect that the claimant complained of pain in her right hip and that her lower back felt weak. Dr. T's diagnosis was identical to that indicated on September 7, 1999, and thereafter. Dr. T continued to treat the claimant under the September 7, 1999, claim until February 8, 2000, when the claimant completed a patient information sheet with the Clinic indicating that she had sustained a work-related back injury on _____.

Dr. T took the claimant off work on November 22, 1999. The claimant took Dr. T's off-work slip to Ms. F, the human resources manager, on November 23, 1999. The claimant testified that she told Ms. F that she was injured at work in late _____ or early _____. According to the claimant, she told Ms. F in February or March 2000, that the injury occurred on _____. Ms. F testified that on November 23, 1999, the claimant told her that she had sustained a work-related injury in _____ or _____; that she was not sure of the date or what activity had caused the injury; and that she had reported the injury to Mr. A. Ms. F said that she contacted Mr. A and he said that the claimant had mentioned something to him, but he could not recall the specifics. Ms. F did not document her conversation with Mr. A.

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 did not find the claimant's testimony persuasive. The hearing officer noted that medical reports through February 8, 2000, did not reflect a history of an injury on _____. The hearing officer concluded that the claimant did not sustain an injury to her lower back in the course and scope of 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 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 did not report the injury to the employer until November 23, 1999. 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 his 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:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge