APPEAL NO. 001505
FILED AUGUST 4, 2000

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 June 2, 2000, in _____, Texas, with _____ presiding as hearing officer. She determined that the appellant/cross-respondent (claimant) did sustain a work-related injury on _____; that the claimant timely reported the injury; that the respondent/cross-appellant (carrier) is not relieved of liability under Section 409.002 because the claimant timely notified his employer under Section 409.001; and that the claimant failed without good cause to timely file a claim for workers' compensation, thereby relieving the employer and carrier of liability for the injury as required by Section 409.003. The claimant appealed the adverse determinations, expressing his disagreement with them. The carrier responded that these determinations are correct and should be affirmed. The carrier appealed the findings of a work-related injury and timely notice, contending that they are contrary to the great weight and preponderance of the evidence. The claimant replies to the carrier's appeal that these determinations are correct and should be affirmed. The hearing officer made no findings of fact or conclusions of law that addressed a disability issue that was presented for resolution.

DECISION

Affirmed as reformed.

The claimant worked on an assembly line trimming beef. He testified that on _____, as he stretched a beef carcass for cutting, he felt a pull in his right groin area. He said that at his next break, he went to the restroom and noticed a bulge. He then said he reported to (Mr. M), his supervisor, that he stretched a piece of meat and felt the pull in his groin, but Mr. M said nothing. According to the claimant, he again reported the incident to Mr. M the next day and wanted to be referred to a doctor, but Mr. M told him to quit being a "cry baby," go back to work, and see a doctor on his own if he wanted. On _____, the claimant saw (Dr. G), who diagnosed a right inguinal hernia and issued a return to limited duty with no lifting over 30 pounds. The claimant said he took the light-duty excuse to Mr. M the next day, _____, and also told another supervisor, (Mr. R), about the injury. Mr. M reportedly told him that his current job fit within the work restrictions.

The claimant continued working for over a year. According to his testimony, on _____, he again reported his worsening condition to Mr. M, who then filled out an accident report.[1] The claimant stopped working on_____, and underwent repair surgery on_____. He returned to full-time duties on February 10, 2000,

[1]The Employer's First Report of Injury or Illness (TWCC-1) in evidence was completed on November 30, 1999, and refers to a date of injury of November 16, 1999.

without, he said, further problems. The claimant completed and signed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), which was received by the Texas Workers' Compensation Commission (Commission) on _____.

Mr. M testified that when the claimant reported prior work-related injuries he made reports on all of them. He insisted he never received a report from the claimant of any pain in _____; that he never saw Dr. G's light-duty release; and that if he had, he would have immediately sent the claimant to the company nurse. Mr. M said he would have remembered something as important as a report of a work-related injury. He said that the claimant came to him sometime in _____(he could not remember which year) and asked him to complete a report reflecting an injury in _____ so his medical bills could be paid. According to Mr. M, the claimant became upset when Mr. M refused to do this.

The claimant had the burden of proof on all issues. Whether he sustained a hernia on the date and in the manner claimed and whether he reported it as claimed presented questions of fact for the hearing officer to decide and could be proved by his testimony alone if found credible. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994. The hearing officer found the claimant credible in his account of the injury and his reporting of it and was not persuaded by Mr. M's testimony. For this reason, she found a work-related injury and timely notice. In its appeal, the carrier argues essentially that the claimant lacked credibility and that the medical evidence did not support the claimed injury. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. 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 find the evidence sufficient and affirm these determinations of the hearing officer.[2]

Section 409.003 requires an injured employee to file a claim for compensation with the Commission not later than one year after the date of injury. Failure to do so without good cause relieves the employer and carrier of liability for the claim. For purposes of this case, an employer is required to report to the carrier an injury if the injury resulted in the absence of an employee from work for more than one day. Section 409.005. Failure to file this report when it is required tolls the one-year period for filing a claim. Consistent with the claimant's own testimony, he did not miss a day of work due to his hernia injury until some 16 months after the date of injury.

[2]The actual date of injury found was _____. The evidence supported a _____, date of injury. The slight discrepancy has not been appealed by either party and we do not further address it.

Therefore, there was no tolling of the period for filing the claim within any part of the one year in which the claim had to be filed.

We note that the claimant's appeal was received by fax and at least the second page (if not more) was not transmitted. The only portion transmitted dealt with the claimant's argument that the period for filing a claim was tolled by virtue of the failure of the employer to file a report of injury. As indicated above, we have rejected that argument. Because of the missing page(s) of the appeal, we have no way of knowing if the claimant intended to appeal the finding of no good cause for the late filing of the claim for compensation. In any case, the arguably inconsistent assertions of good cause at the CCH were ignorance of the filing requirement and fear of reprisal by the employer even though, he said, he repeatedly reported the injury to his employer. Ignorance of the law has not traditionally been accepted as good cause. *See* Texas Workers' Compensation Commission Appeal No. 94050, decided February 25, 1994. The hearing officer rejected these reasons as good cause. We find no error in this determination.

Because the hearing officer found that the claimant without good cause failed to timely file a claim, which finding we have affirmed, the injury became noncompensable. For this reason, we reform Conclusion of Law No. 3 to replace "compensable injury" with "work-related injury." For the same reason, we reform Conclusion of Law No. 4 by adding at the end of the sentence the phrase "thereby relieving the carrier of liability."

For the foregoing reasons, we affirm the decision and order of the hearing officer as reformed.

Alan C. Ernst
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge