APPEAL NO. 001614

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 000595, decided May 3, 2000, we reversed the hearing officer's determination that the appellant (claimant) did not have good cause for failing to timely report her repetitive trauma injury and remanded this issue for further specific findings as to the existence of good cause based on the claimed trivialization of the injury. The determinations that the claimant sustained a work-related injury; that the date of the injury was _____; and that as a result of this injury the claimant was unable to earn her preinjury wages for a period of time were not appealed. The hearing officer issued a decision and order on remand in which she found that the claimant did not trivialize her injury and did not have continuing good cause for not timely reporting the injury. The claimant appeals this determination, contending it is against the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

Our decision in Appeal No. 000595 contained a discussion of the law concerning good cause for not timely reporting an injury and the concept of good cause based on trivialization of an injury, that is, the good faith belief that an injury is minor or trivial. The date of injury in this case was established as _____, and the claimant relied on trivialization as good cause to excuse her failure to timely report the injury. The purpose of the remand was for the hearing officer to expressly address this contention in findings of fact and a conclusion of law.

The claimant had a regularly scheduled appointment on _____, with Dr. V, her treating doctor, for a follow-up on other complaints. Dr. V's notes of this visit reflect that the claimant worked nights and was complaining of right shoulder and neck pain. A comment was made in these notes about her activities at work. From this evidence, the hearing officer found a date of injury of _____. The claimant testified that she did not report her injury to her employer for about 45 days "[b]ecause I thought in reality it was just that I was tired." She said she finally reported the injury when the pain was "very strong."

The hearing officer commented in her decision and order that she was not persuaded by the claimant's assertion of trivialization because the claimant raised the matter of neck and shoulder pain, which she related to her work, with her doctor on _____. The claimant appeals this determination arguing that she did not appreciate the seriousness of her injury at this time and the fact that the complaints of pain were made in the context of the work environment does not contradict the notion of trivialization. Whether the claimant trivialized her injury until the pain became so severe

and she reported it presented a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950470, decided May 12, 1995. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Apparently, the hearing officer determined that if the claimant felt she should tell her doctor about the pain, then she was not trivializing it at the time. Obviously, this limited evidence is subject to varying inferences and another hearing officer may well have concluded otherwise. 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 decline to substitute our opinion of the credibility of the claimant in her assertion of trivialization for that of the hearing officer. Rather, we find the evidence sufficient to support the determination that the claimant did not have a good faith belief her injury was trivial up to the time she reported her injury.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge