APPEAL NO. 001919

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 July 25, 2000. The issues at the CCH were whether the appellant/cross-respondent (claimant) sustained an injury to her lumbar spine; the date of the injury; whether she had disability from her injury beginning March 1, 2000; whether the respondent/cross-appellant (self-insured) was relieved from liability because of the failure to give timely notice of the injury, and whether the self-insured was released from liability due to the claimant's failure to file a claim within one year after the date of injury or whether she had good cause for such failure.

The hearing officer held that the claimant injured her lumbar spine on _____; that she gave timely notice of injury to her employer; that she did not have disability from the injury beginning on March 1, 2000; and that the respondent (self-insured) was relieved from liability because the claimant did not file a timely claim and did not have good cause for such failure.

The claimant has appealed the determinations of no disability and untimely claim. On the latter point, the claimant does not argue that she timely filed a claim or had good cause, but merely states that, because she had an injury, the self-insured should not be released from liability for the claim. The self-insured responds that these determinations are supported by the record. The self-insured cross-appeals and argues that the hearing officer erred by finding that the claimant had a lumbar spine injury and that she timely reported it to her employer. The self-insured points out that the date of the alleged injury has been variable, with no consistent support for any date of a work-related injury. The self-insured argues the evidence that conflicts with the hearing officer's finding of timely notice. The claimant responds that these findings are sufficiently supported.

DECISION

We affirm the hearing officer's decision on all appealed points.

The claimant began working for the employer on September 21, 1994. She sewed the seat seam of garments for the employer during October 1996. Her line supervisor was Mr. T. The claimant testified that she injured herself on _____, when she pulled a cart and felt a pull on her lower back and fainted. She said that she was two and a half months pregnant at the time. A coworker, Ms. H, spoke to Mr. T and told him that the claimant had an accident with the cart, and Mr. T told her to rest for 10 to 15 minutes. The claimant said she was not able to overhear the conversation. However, the claimant said that when Mr. T approached her, he asked her how she was feeling and she assumed that her back pain and dizziness were the result of her pregnancy. The claimant agreed that she had not reported her injury to any other supervisor.

The claimant said that she realized that her back was not related to her pregnancy seven or eight months after her pregnancy. When she was treated by Dr. Q at that time, he related her pain to her work. The claimant said that she just was given pain medication. The pain did not resolve and the claimant said she complained again in August 1998. At this time, Dr. Q ordered an MRI. The claimant said that Dr. Q called her and told her she had a very serious problem and referred her to Dr. M. When it was pointed out that the claimant had seen Dr. Q in 1997 and 1998 for other problems, according to his reports, the claimant contended that she "mentioned" her back and that Dr. Q told her he would work on one thing at a time.

The claimant said she began to see Dr. M on November 16, 1999. Dr. M told her that her pain "was related to" her job. She said that a person in Dr. M's office told her she should report the accident to the Texas Workers' Compensation Commission (Commission) but she did not because she thought it was for people who were completely disabled and, in any case, she did not know its location.

Dr. M informed her in December 1999 that she would need an operation and the claimant said that it was at that point that she notified the Commission. She said that her first Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) used the date October 16, 1997, as the date of injury because she confused the date of her child's birth with her pregnancy, which was revised in a subsequent TWCC-41. The claimant filed three claims in all. The claimant said that her ultimate diagnosis was that she had two herniated discs at L4 and L5.

The claimant said that she did not know about the one-year claim filing requirement. Asked why she did not come to the Commission sooner, she said that she initially did not come because of her pregnancy and that, secondly, the doctor took a long time to tell her what was wrong. However, asked if it was not until after her MRI in 1999 when she related her problems to her accident, she denied this and said that she had known "right away.". The new information she had in 1999 was as to the severity, not the occurrence, of the injury.

The claimant continued to work after _____, but was taken off work when she was seven months pregnant due to her stomach and inability to lift. The claimant said that she was taken off work by a doctor in March 1999 for two weeks but she asked to be released back to work because she had no other income. However, the claimant said that the employer declined to let her work until she was 100%.

Ms. H testified that she had witnessed the accident and told Mr. T that the claimant had pulled her cart and felt bad. She was certain that the incident occurred in _____. Mr. T testified that it was not possible that either the claimant or Ms. H reported the injury to him as the supervisor because he worked in another department until 1997, although he was a foreman. He said that if either woman had reported the injury to him, he did not remember it.

Various reports filed by the claimant, or by the self-insured, report various dates of injury for a strain, including _____, and _____. Dr. Q's reports in evidence show no report of back pain until July 28, 1999, in which it was reported that the claimant had experienced such pain for several months, which was not that frequent. In August, Dr. Q recommended an MRI because of numbness going down the claimant's leg; he noted that an x-ray showed minimal degenerative changes in the lumbar spine. A report from Dr. M dated November 16, 1999, reported that the claimant attributed her back pain generally to increasing her workload at work, with pain starting about four years ago. He noted that an MRI showed a degenerative disc with some midline protrusion at L4-5. "An incident" at work resulting in pain in 1997 was reported to another referral doctor.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.- El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.- Beaumont 1993, no writ). In this case, the hearing officer evidently chose to believe the testimony of the claimant and Ms. H as to occurrence of the injury and could interpret the equivocation of Mr. T, along with the testimony of Ms. H (as a person acting on behalf of the claimant), as timely reporting of that injury.[1] While there is plainly conflicting evidence, including the lack of any notation of a back injury in Dr. Q's records prior to July 28, 1999, we will not substitute our own weighing of the evidence. Likewise supportable are the determinations that the claimant was not unable to obtain or retain employment due to the injury and that she did not have disability.

The issue of timely filing a claim is, however, dispositive in this case. A claim must be filed within one year after the date of injury (in this case, by _____). Section 409.004. An exception may be found when there is good cause for the failure to timely report. Ignorance of the law is not good cause. The claimant's pregnancy was over before the one-year deadline had run. Finally, although lack of appreciation of the severity of the injury can constitute good cause, such good cause should continue until the accident is reported. In this case, the hearing officer determined that the claimant had not acted with reasonable prudence to report her injury and his determination is supported by the record.

[1]We note that the hearing officer has found that the date of injury was _____, because the claimant "knew, or should have known" that her injury was related to her employment on that date. This finding was irrelevant to the date of injury for a specific incident as asserted by the claimant (as opposed to an occupational disease) but, as the date found by the hearing officer was the date the specific injury was alleged, there is no error.

We affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge