APPEAL NO. 001957

Following a contested case hearing (CCH) held on July 26, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant (claimant) failed to timely report his injury of _____, without good cause; that the claimant failed to timely file his claim with the Texas Workers' Compensation Commission (Commission) without good cause; and that the claimant sustained no disability. The claimant files a request for review, challenging these determinations. The claimant argues that he did timely report his injury, that he did not timely file a claim because he was told by the employer that the employer would take care of the claim, and that he had disability as a result of the injury. The respondent (carrier) replies that the determinations of the hearing officer were sufficiently supported by the evidence and should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarizes the evidence in her decision and we adopt her summary of the evidence. The claimant testified that he was injured on _____, and reported an injury to the employer on the same date. The claimant testified that he injured his back lifting buckets of mud. Witnesses from the employer deny the claimant reported an injury. It is undisputed that the claimant did not file a claim with the Commission until April 21, 2000. The claimant attempted to explain this late filing by his lack of understanding of the workers' compensation law and his belief that the employer was trying to secure workers' compensation benefits for him. The claimant testified that he was unable to work as a result of his injury. The claimant did present some medical evidence which tended to support his claims of disability.

The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. The 1989 Act provides that a determination by the Commission that good cause exists for failure to provide notice of injury to an employer in a timely manner or actual knowledge of the injury by the employer can relieve the claimant of the requirement to report the injury. Section 409.002. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). To be effective, notice of injury needs to inform the employer of the general nature of the injury and the fact it is job related (emphasis added). DeAnda v. Home Ins. Co., 618 S.W.2d 529, 533 (Tex. 1980). Thus, where the employer knew of a physical problem but was not informed it was job related, there was not notice of injury. Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied). Also, the actual knowledge exception requires actual knowledge of an injury. Fairchild v. Insurance Company of North America, 610 S.W.2d 217, 220 (Tex. Civ. App.-Houston [1st Dist.] 1980, no writ). The burden is on the claimant to prove actual knowledge. Miller v. Texas Employers' Insurance Association, 488 S.W.2d 489 (Tex. Civ. App.-Beaumont 1972, writ ref'd n.r.e.).

In the present case, the hearing officer found as a matter of fact that the claimant, without good cause, did not report an injury to the employer within 30 days. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

There was conflicting evidence concerning whether or not the claimant timely reported an injury. It was up to the hearing officer to resolve the conflicting evidence and she was not required to be persuaded by the claimant's testimony that he timely reported the injury. Pursuant to Section 409.002, failure to give timely notice without good cause relieves the employer and the carrier of liability.

Section 409.003 provides that a claim for compensation must be filed with the Commission within one year of the date of injury. Failure to do so, in the absence of good cause, relieves the employer and carrier of liability for the injury. Section 409.004. The test of good cause is that of ordinary prudence, that is, did the claimant exercise the degree of diligence that a person of ordinary prudence would have exercised under the same or similar circumstances. The claimant argues on appeal that he did not file a claim because the employer promised to take care of the claim. The claimant asserted at the CCH that he did not fully understand how the system worked. The hearing officer found that claimant was not credible in his testimony regarding reporting the injury to the employer. Nor was the hearing officer persuaded by the claimant's testimony that the employer promised to take care of the claim. Further, ignorance of the law generally does not constitute good cause. Texas Workers' Compensation Commission Appeal No. 971670, decided October 9, 1997. The hearing officer was not satisfied that the claimant established good cause for his late filing. From our review of the record, we conclude that the evidence was sufficient to support this determination.

With the carrier relieved of liability, there is no compensable claim upon which to base disability. Thus, there is no basis to overturn the hearing officer's finding of no disability.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Judy L. Stephens
Appeals Judge