

APPEAL NO. 002119

This appeal is brought 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 August 11, 2000. The appellant (claimant) and the respondent (self-insured) stipulated that the claimant was injured in the course and scope of her employment on _____. The hearing officer determined that the claimant did not give notice of the injury to her employer until _____; that she did not report the injury to her employer not later than the 30th day after the injury; that the claimant did not have good cause for failing to report the injury timely; that she is not barred from pursuing workers' compensation benefits because of an election to receive benefits under her group health insurance policy; that due to the injury, the claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage beginning September 2, 1999, and continuing to the date of the CCH; and that since the claimant did not sustain a compensable injury, she did not have disability. The determination that the claimant is not barred from pursuing workers' compensation benefits has not been appealed and has become final under the provisions of Section 410.169.

The claimant appealed. She contended that she timely reported the injury; and that if she did not timely report the injury, she had good cause for reporting the injury when she did report it. She requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in her favor. The self-insured responded, urged that the evidence is sufficient to support the determinations of the hearing officer, and requested that her decision be affirmed.

DECISION

We reverse and remand.

The Decision and Order of the hearing officer contains a statement of the evidence. Self-insured's Exhibit No. 9 is a transcript of Ms. W of the State Office of Risk Management questioning Ms. P, the business manager of the employer. Ms. P answered a question by stating that she is not the claimant's supervisor, but Section 409.001 requires only that the notice be given to an employee of the employer who holds a supervisory or management position. Answers to questions indicate that the claimant cleaned the office occupied by Ms. P; that Ms. P had back pain for a number of years; that Ms. P said that they "were just comparing notes on it"; that the claimant and Ms. P talked about the claimant's back problems; that Ms. P asked the claimant questions; and that the claimant told Ms. P about pulling trash bags, the hole in the floor, and her visits to doctors. It appears that there may have been more than one conversation between Ms. P and the claimant concerning the claimant's back. The information on the dates of the conversations is not clear, but one of them could have been as early as the end of July 1999. Self-insured's Exhibit No. 9 is not specifically mentioned in the hearing officer's statement of the evidence. We reverse the determinations of the hearing officer related to whether the claimant timely reported the injury to her employer, whether she had good

cause for not timely reporting the injury, and whether the claimant had disability. We remand for the hearing officer to consider Self-insured's Exhibit No. 9 and the other evidence in the record and to render a decision resolving those disputed issues. The Decision and Order contains significant clerical errors that should be corrected in the Decision and Order rendered on remand.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge