

APPEAL NO. 002271

On August 11, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____; that the claimant had good cause for failing to notify the employer of the injury within 30 days of the injury; and that the claimant had disability from August 10, 1999, through the date of the CCH. The appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. The claimant requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The claimant testified that on _____, he was performing his job duties as an inspector for the employer on the top of a 30-foot storage tank when he slipped and fell on top of the storage tank while carrying metal sample containers. The claimant said that when he fell he caught himself on a railing and that he hurt the right side of his body from his shoulder to his knee. He said that his right knee hit the storage tank, that he dropped the metal sample containers over the side of the storage tank, and that the containers were damaged. The claimant said that on _____, after the accident occurred, he took the damaged containers to the employer's dispatcher, TC, who was his supervisor, and that, although he did not think he was hurt that bad, he told TC that he was hurt when he slipped and fell on the tank and showed him the damaged containers.

TC testified that on _____ the claimant told him that he had slipped and dropped the containers and that the containers were damaged, but that the claimant did not tell him that he had been injured.

The claimant said that he continued to work after his accident of _____, that he did not think that his injury was that big of a deal, and that he thought he would get over it. However, he said that his knee got progressively worse and that he went to Dr. N on July 28, 1999.

Dr. N noted in a July 28, 1999, record that the claimant told him that about 30 days before July 28, he was performing his job carrying sample containers on a tank when he slipped on the tank and hurt his right knee. Dr. N noted that the claimant had a painful, tender, and swollen right knee and diagnosed the claimant as having a probable torn medial meniscus and a possible torn medial collateral ligament. Dr. N recommended that the claimant have an MRI of the right knee which was denied by the carrier. Dr. N placed the claimant on a light-duty status with restrictions of no climbing, squatting, stooping, kneeling, or crawling.

The claimant said that on July 29, 1999, the day after he saw Dr. N, he notified KL, the employer's operations manager, about his work injury of _____ and about the light-duty release. The claimant said that the employer did not have a light-duty position for him; that he last worked on August 9, 1999; that his knee continues to be painful, with popping and burning sensations; that his knee injury prevents him from performing his inspector job, which requires climbing ladders to the top of storage tanks; and that at some point the employer terminated his employment.

KL stated that the claimant notified him on July 29, 1999, that he had been injured at work on _____ when he slipped and fell on the tank.

Dr. A examined the claimant at the request of the carrier or employer on August 6, 1999, and Dr. A noted that the claimant told him that he injured his right knee when he fell on top of the tank on _____. Dr. A diagnosed the claimant as having an internal derangement of the right knee and recommended an MRI, which apparently has not been done because of carrier's denial of the claim. Dr. A also restricted the claimant to limited duty.

The issues at the CCH were whether the claimant sustained a compensable injury on _____; whether the claimant reported an injury to the employer not later than the 30th day after the injury and, if not, whether good cause existed for failing to timely report the injury; and whether the claimant had disability. The claimant had the burden to prove that he was injured in the course and scope of his employment; that he notified his employer of the injury within 30 days of the injury under Section 409.001(a), and, if not, that he had good cause for failing to timely report the injury under Section 409.002; and that he had disability as defined by Section 401.011(16).

The hearing officer found that on _____, the claimant was working on the top of a tank taking samples when he slipped and struck his knee; that the claimant sustained an injury in the course and scope of his employment; that the claimant did not report on _____, that he was injured when he slipped and fell; that the claimant did not believe that his knee injury was serious and thought that it would resolve; that the claimant continued working until his knee became progressively worse; that the claimant went to Dr. N on July 28, 1999; that Dr. N confirmed that the claimant had a knee injury; that the claimant gave notice of the knee injury on July 29, 1999; that the claimant had good cause for not giving notice of his injury based on trivialization; and that due to the work injury, the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wages from August 10, 1999, through the date of the CCH. The hearing officer concluded that the claimant sustained a compensable injury on _____; that the claimant did not report an injury to the employer not later than the 30th day after the injury; that the claimant had good cause for failing to timely report the injury; and that the claimant had disability resulting from the injury sustained on _____, from August 10, 1999, through the date of the CCH.

In workers' compensation cases the issues of injury and disability may generally be established by the testimony of the claimant alone. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). A bona fide belief of a claimant that injuries are not serious is sufficient to constitute good cause for delay in giving notice of injury to the employer. Texas Casualty Insurance Company v. Crawford, 340 S.W.2d 110 (Tex. Civ. App.-Amarillo 1960, no writ). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Tommy W. Lueders
Appeals Judge