APPEAL NO. 002711

Following a contested case hearing held on September 14, 2000, and concluding on October 16, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer determined that the appellant (claimant) had not sustained an injury in the course and scope of her employment on _____; that the claimant had not reported an injury to her employer within 30 days of the date of injury and did not have good cause for failing to do so; and that the claimant had not been unable to obtain and retain employment at wages equivalent to her wages prior to _____, at anytime after January 3, 2000. The claimant appealed, asserting that the hearing officer's decision is against the great weight of the evidence and further asserting that the hearing officer had committed error by overruling objections to two of the respondent's (carrier) exhibits. The carrier responded that the hearing officer's decision is supported by the evidence and that the hearing officer had not abused her discretion in ruling on the admissibility of its exhibits and that the admission of the two exhibits, even if error, was not reversible error.

DECISION

Affirmed.

The claimant testified that she sustained an injury while moving sheets of fabric in the course and scope of her employment for (employer) on _____. The claimant, whose primary language is Spanish, testified that a coworker, Ms. S, reported the claimant's work-related injury to their lead man, Mr. B. Mr. B testified that Ms. S had not sought him out to tell him that the claimant was injured, but, rather, he had gone by the claimant's work-station and had noticed that she seemed to be ill. Mr. B testified that he asked if the claimant was all right and that Ms. S had told him that she did not think the claimant was feeling good. Mr. B then escorted the claimant to their mutual supervisor, Mr. H. The claimant testified that she asked Mr. H, who also speaks Spanish, to send her to a doctor because she had hurt herself. Mr. H testified that the claimant had told him only that she was not feeling well and stated that he sent her home because she was obviously ill.

Generally, a claimant must report an injury to his employer within the requisite 30-day period. (Section 409.001), unless there is good cause for the failure to timely report the injury. Section 409.002(2). The question of good cause for failure to timely report an injury is a question for the fact finder. Texas Workers' Compensation Commission Appeal No. 93550, decided August 12, 1993. Good cause must continue to the date when the worker actually files the claim. Texas Workers' Compensation Commission Appeal No. 93649 decided September 8, 1993. The claimant maintained throughout the hearing that she had reported the injury to the employer on the date of the injury or within a week of the injury (the claimant's testimony on this point is different on the two days of the hearing and in the records). The claimant, therefore, offered no evidence to prove that there was good cause for a failure to report the injury within 30 days. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are

conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. There was conflicting evidence regarding whether the claimant reported the injury on November 29, 1999. The hearing officer was acting within her province as the finder of fact in determining the weight and credibility to be afforded the testimony and documentary evidence on whether the claimant reported the injury within 30 days. The hearing officer's determination that the claimant did not report the injury within 30 days and did not have good cause for failing to report an injury is supported by the evidence and we will not substitute our judgment for the hearing officer's.

There was also conflicting evidence on the existence of an injury in the course and scope of employment and the alleged resulting disability. The hearing officer's determination that there was no injury in the course and scope of employment and no inability to obtain and retain employment after the alleged date of injury is supported by the evidence. We affirm the hearing officer's determinations on both issues.

The claimant contends that the hearing officer abused her discretion in admitting the Carrier's Exhibits Nos. 9 and 10. Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. Appeal No. 951943, decided January 2, 1996; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

In this case, the complained-of evidence was relevant to the claimant's credibility and whether she had been unable to obtain and retain employment at wages equivalent to her pre-injury wage. The hearing officer did not abuse her discretion in admitting the evidence after finding that the carrier's development of the evidence was initially thwarted by the claimant's misrepresentations of fact and that the carrier had exercised due diligence in obtaining and exchanging the information after it came to light. Even if there had been an abuse of discretion, any possible error was not reasonably calculated to cause, nor did it probably cause, the rendition of an improper judgment. We find no merit to the claimant's complaint on the hearing officer's evidentiary ruling.

There being no reversible error in the record and the hearing officer's determinations being supported by the evidence, we affirm the decision and order.

_____
Kenneth A. Huchton
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Judy L. Stephens
Appeals Judge