

APPEAL NO. 010391

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 26, 2001, the hearing officer resolved the disputed issues by concluding that the respondent (claimant) sustained a compensable lumbar spine aggravation injury on _____; that the claimant had continuing good cause for his failure to report this injury until August 22, 2000; that the claimant had disability from his compensable lumbar spine aggravation injury from July 17, 2000, through the date of the hearing; and that the doctrine of election of remedies does not bar the claimant from pursuing and receiving workers' compensation benefits for his compensable lumbar spine aggravation injury of _____. The appellant (carrier) has requested our review and asserts that these determinations are against the great weight of the evidence. The claimant filed a response urging our affirmance.

DECISION

Affirmed.

The hearing officer did not err in reaching his conclusions in this case. The claimant testified that on _____, he injured his low back, which had been previously injured and operated on in 1998 and which had recently become intermittently painful, when he pulled a pipeline locator probing bar out of the ground; that he thought he was experiencing just another flare-up of his preexisting back condition and so informed his supervisor; and that when a doctor in another city, who obtained an MRI on August 16, 2000, explained to him on August 22, 2000, that the MRI evidenced an additional lumbar spine injury, he realized he had a new injury and reported it as a new injury that day to his employer. The claimant, a senior pipeline operator, indicated that he has been unable to work since July 17, 2000, the date he first sought medical attention for this injury. We cannot say that the hearing officer's injury, good cause for untimely reporting, and disability determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The evidence concerning the election of remedies was in some conflict. On the one hand, the claimant stated that he had worked for the employer for 20 years and was a senior operator; that he had been on the employer's safety team, which instructed employees about timely reporting of workers' compensation claims; that he had previously filed two claims under the employer's workers' compensation insurance (hearing loss and bee sting) and three claims under the employer's group health insurance; and that he was concerned about affecting the employer's workplace safety incentives and also feared retaliation by the employer if he filed a workers' compensation claim for this injury. On the other hand, the claimant's testimony that he was advised in September 2000 by two employees in the employer's human resources office that he should continue to file his medical bills with the group health insurance carrier lest he risk losing coverage altogether was corroborated by the two employees involved. Notwithstanding the substantial

evidence tending to show that the claimant knew the differences between filing a claim for workers' compensation benefits and filing for group health insurance, short-term disability, and income protection plan benefits, the hearing officer nevertheless determined that the carrier's evidence did not meet, at least fully, the election of remedies doctrine test stated in Bocanegra v. Aetna Life Insurance Company, 605 S.W.2d 848 (Tex. 1980). We cannot say that this determination is against the great weight of the evidence.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge