APPEAL NO. 010609

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 7, 2001. The hearing officer decided the issues of compensable injury, timely reporting, and disability adversely to the appellant (claimant) and the claimant has appealed on sufficiency of the evidence grounds. The respondent (carrier) has responded to the appeal, urging affirmance.

DECISION

Affirmed.

We first note typographical errors in the hearing officer's statement of the first and third issues. The date of the alleged injury was _____, not _____, as stated in those issues. The record is clear, however, that the parties and the hearing officer were addressing the correct date during the hearing and everywhere else that dates are referenced in the hearing officer's report. There is no prejudice to the claimant from this obvious typographical error.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. The testimony of a claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. 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 we will 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 Company, 715 S.W.2d 629, 635 (Tex. 1986).

The thrust of the claimant's case was that his injury occurred when he slipped and fell on a wet floor at work. It is undisputed that he had herniated discs at L4-5 and L5-S1 which resulted in spinal surgery, but the hearing officer was unable to conclude whether the injury was the result of the particular slip and fall alleged or the result of earlier heavy lifting by the claimant. The hearing officer determined that the mechanism of the injury was moot because he further determined that the claimant had failed to timely inform his supervisor that the injury was work-related. Section 409.001 requires that an employee notify the employer of an injury by the 30th day after the injury occurs. Failure to do so, absent a showing of good cause or actual knowledge of the injury by the employer, relieves

the carrier and employer of liability for the payment of benefits for the injury. Section 409.002. Whether, and if so, when, notice is given is a question of fact for the hearing officer to decide. The hearing officer did not err in finding that the claimant did not report a work-related injury to his employer within 30 days of the date of the claimed injury and did not have good cause for failing to do so. 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. 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). The evidence, including the claimant's testimony that his supervisor was aware the claimant was having back pain but that the claimant had failed to tell the supervisor about the specific slip-and-fall incident and that it was related to his employment, supports the hearing officer's decision.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge