

APPEAL NO. 011947
FILED OCTOBER 1, 2001

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 July 25, 2001. The hearing officer determined that appellant/cross-respondent (claimant) sustained an injury in the course and scope of employment and timely reported the injury, but that she did not have disability. Claimant appealed the disability determination on sufficiency grounds. Respondent/cross-appellant (carrier) responded that the Appeals Panel should affirm the disability determination. In a cross-appeal, carrier appealed the injury and timely notice determinations on sufficiency grounds. Claimant responded that the Appeals Panel should affirm these complained-of determinations.

DECISION

We affirm in part and reverse and remand in part.

We have reviewed the complained-of determinations regarding whether claimant sustained an injury in the course and scope of employment and whether she had disability, and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. The hearing officer did not misstate the evidence when noting that, at the time that claimant's employment was terminated, she was still working and no doctor had said she was unable to work. We conclude that the hearing officer's determinations are not 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).

Regarding the timely notice issue, the hearing officer found that claimant notified the employer of the injury on June 1, 2000. The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. The 1989 Act provides that a determination by the Texas Workers' Compensation Commission (Commission) that good cause exists for failure to provide notice of injury to an employer in a timely manner or actual knowledge of the injury by the employer can relieve the claimant of the requirement to report the injury. Section 409.002. 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).

It was claimant's contention at the hearing that she had reported her injury within a few days of the incident. However, the hearing officer apparently determined that

employer had notice of the injury from a medical billing form sent to it. In her discussion, the hearing officer noted that employer had received a bill in early June from claimant's treating doctor. There was evidence that during the "first week in June" Ms. S, a manager for employer, had received a health insurance claim form or bill noting a work-related injury sustained by claimant. This bill stated that the injury was employment related and gave the date of the injury, the name of the employer, and the diagnosis codes for the injury; handwritten at the top it said, "billed 5/22/00." However, Ms. S said that when she asked claimant about this bill claimant denied that she had sustained an injury at work. Even if the hearing officer found that employer received this bill on June 1, 2000, if claimant then denied that the injury was work-related, it cannot be said that employer had notice of the injury. We must remand this case for the hearing officer to reconsider the timely notice issue based on the record. The hearing officer should make fact findings regarding whether, when confronted with the bill, claimant denied that the injury was work related.

We affirm that part of the hearing officer's decision that determined that claimant sustained an injury in the course and scope of her employment and that she did not have disability. We reverse the hearing officer's determination regarding timely notice and remand for reconsideration of this issue.

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 Commission's Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001). See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **UTICA NATIONAL INSURANCE COMPANY OF TEXAS** and the name and address of its registered agent for service of process is

**RICHARD A. MAYER
11910 GREENVILLE AVENUE, SUITE 600
DALLAS, TEXAS 75243-9332.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge