APPEAL NO. 012742
FILED DECEMBER 20, 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 (CCH) was held on July 3, 2001. This case is back before us after our remand in Texas Workers' Compensation Commission Appeal No. 011717, decided September 6, 2001. We remanded the case for the hearing officer to articulate her reasoning for her determination that the appellant (carrier) is not relieved from liability under Section 409.004 due to the respondent's (claimant) failure to comply with Section 409.003. We asked that the hearing officer "specifically state what good cause, if any, she finds to exist for the claimant's failure to file a claim in a timely manner." A hearing on remand was held on October 18, 2001, with the same hearing officer. On remand, the hearing officer found that the claimant timely filed her claim for compensation, considering that the claimant missed more than one day of work due to her injury, which tolled the period for filing a claim under Section 409.003. The carrier appeals, arguing that the hearing officer went beyond the scope of the remand when she considered reasons, other than good cause, for the claimant's failure to file a claim in a timely manner. The carrier also argues that the hearing officer incorrectly analyzed the evidence, applying "disability" definitions when the question was whether the claimant was absent for more than one day. The carrier argues that the evidence was insufficient to establish that the claimant missed more than one day of work, and that tolling under Section 409.008 did not occur. The claimant responds that the decision of the hearing officer should be affirmed.

DECISION

Affirmed.

We reject the carrier's argument that the hearing officer exceeded the scope of the remand. We asked the hearing officer to articulate her reasons for determining that the carrier is not relieved from liability under Section 409.003, but we did not limit her to consideration of good cause only.

Section 409.003 provides, essentially, that an employee must file a claim for compensation with the Texas Workers' Compensation Commission (Commission) not later than one year after the date of the injury. Failure to do so without good cause relieves the employer and carrier of liability for benefits. Section 409.004. An employer is also required to file a written report of injury with the Commission and the carrier if an injury results in the absence of an employee from work for more than one day. Section 409.005(a)(1). If an employer with knowledge of an injury fails to file this report, the one-year period for filing a claim with the Commission does not begin to run until the report is filed. Section 409.008.

The claimant sustained an injury on _____, which she immediately reported to her supervisor. She continued to work full duty for two weeks. She then

missed one-half day of work when she was sent to the doctor. He placed her on light duty; her light duty consisted of 4 to 5 hours of work per day, five days each week, at her usual hourly rate of pay. She had been working 8 to 9 hours per day, five days per week. She voluntarily resigned after working light duty for two weeks. The claimant filed her Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) on June 1, 1998, more than one year after the date of injury. The employer filed an Employer's First Report of Injury or Illness (TWCC-1) with the Commission on August 5, 1999. The parties agreed at the CCH that the claimant would not be able to establish good cause for her failure to file a claim within one year of the injury. The hearing officer found that the period for filing the claim was extended by virtue of the employer's delay in filing a report of injury. The hearing officer found that the claimant's injury caused her to be absent from work for more than one day, and did so by combining the one-half day of work missed when the claimant went to see the doctor with the hours of work missed when the claimant worked reduced hours on light duty. The hearing officer discussed the fact that the claimant never missed a full day of work before resigning, and likened this situation to intermittent days of disability cumulating to calculate the disability accrual date. The hearing officer cumulated the one-half day of work the claimant missed after seeing the doctor and the shortened hours that the claimant worked while on light duty to find that the "Claimant missed more than one day of work as a result of the _____ work related injury by the second day Claimant worked reduced hours on light duty."

The 1989 Act must be given liberal construction in order to carry out its evident purpose, which is to assist injured workers. Albertson's, Inc. v. Sinclair, 984 S.W.2d 958 (Tex. 1999). We believe that the "evident purpose" for requiring the employer to file a TWCC-1 with the Commission and the insurance carrier is to insure that serious injuries are promptly reported. An injury which causes an employee's absence from work for more than one day has been deemed to be serious enough to be reported. But for the injury, this employee would have been working approximately 40 hours a week. She was sent home from work for a half day after seeing the doctor, and then placed on light duty, which shortened her work hours to nearly half of her preinjury work hours. We hold that the reporting requirement was triggered because this employee's injury caused her absence from work in the form of shortened hours for more than one day. Because the employer failed to timely file the TWCC-1, the tolling provisions of Section 409.008 apply, and the claimant's filing of her claim on June 1, 1998, is timely.

The evidence sufficiently supports the hearing officer's decision. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947,

no writ). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge