APPEAL NO. 013078
FILED FEBRUARY 1, 2002

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 November 19, 2001. The hearing officer resolved the disputed issues by concluding that the respondent/cross-appellant (carrier) is relieved from liability under Section 409.002 because of the appellant/cross-respondent's (claimant) failure to timely notify his employer of his injury pursuant to Section 409.001 and that because the carrier is relieved from liability, the claimant did not sustain a compensable injury and did not have disability. In his appeal, the claimant argues that the hearing officer's notice determination is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. The appeals file does not contain a response from the carrier to the claimant's appeal. In its cross-appeal, the carrier appeals the hearing officer's findings that the claimant's job duties involved repetitively traumatic activities; that those activities caused the claimant's left knee condition; that the claimant was unable to obtain and retain employment at his preinjury wage as a result of his knee injury from _____, until June 21, 2001; and that the claimant sustained a work-related repetitive trauma injury to his left knee with a date of injury of _____. The carrier contends that the challenged findings have no evidentiary support or, alternatively, the findings are against the great weight and preponderance of the evidence. In his response, the claimant urges affirmance of the challenged findings.

DECISION

Affirmed.

Section 409.001 requires that an employee, or a person acting on the employee's behalf, report the injury to the employer within 30 days of the date of injury. Failure to do so, absent a showing of good cause or actual knowledge of the injury by the employer, relieves the carrier 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. Texas Workers' Compensation Commission Appeal No. 93761, decided October 4, 1993. Similarly, whether good cause exists for failing to timely report an injury is a question for the fact finder. Texas Workers' Compensation Commission Appeal No. 93550, decided August 12, 1993. A claimant must act with diligence in notifying the employer of a claim. Texas Workers' Compensation Commission Appeal No. 93649, decided September 8, 1993. The test for good cause is that of ordinary prudence or "that degree of diligence that an ordinary person would have exercised under the same or similar circumstances," and it is within the purview of the hearing officer to determine what ordinary prudence is under the circumstances. *Id*. A reason or excuse generally recognized as good cause for late reporting is the belief of the employee that the injury is trivial. Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994. The hearing officer was not persuaded that the claimant sustained his burden of proving good cause based on trivialization. That determination is not so against the great

weight of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the notice determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant also had the burden to prove that he sustained the claimed injury and that he had the inability to obtain and retain employment at his preinjury wage because of his injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. Generally, injury and disability can be established by the testimony of the claimant alone, if it is believed by the hearing officer. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Upon review of the record submitted, we cannot agree that the hearing officer's determinations that the claimant sustained a work-related repetitive trauma injury to his knee and that his knee injury caused him to be unable to work for the period of time found by the hearing officer are so against the great weight of the evidence as to compel their reversal on appeal. Cain, *supra*. However, given our affirmance of the hearing officer's determination that the claimant did not timely report his injury to his employer, we affirm the conclusions that the claimant did not sustain a compensable injury and that he did not have disability within the meaning of Section 401.011(16).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **COLONIAL CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

WILLIAM HAGAN
12850 SPURLING DRIVE, SUITE 250
DALLAS, TEXAS 75203.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge