

APPEAL NO. 022295
FILED OCTOBER 24, 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 August 21, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury to the neck on _____; that claimant had disability beginning on January 3, 2002, and continuing through February 4, 2002; that the appellant (carrier) is not relieved of liability because of the claimant's failure to timely notify the employer pursuant to section 409.001; and that the carrier is not relieved of liability because of the claimant's failure to timely file a claim for compensation within one year of the injury as required by the 1989 Act. The carrier appeals, arguing that there is no evidence to support the determinations of the hearing officer or alternatively that the determinations are against the great weight and preponderance of the evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that at the time of his injury he worked as a structural fitter for the employer. The claimant testified that on _____, he stood up while underneath a structure, striking his head causing him to be knocked to his knees. The claimant additionally testified that later the same morning he again fell and struck his head after swinging a sledgehammer and missing his target. According to his testimony, the claimant did not feel any pain until two days later when he felt excruciating pain in his left shoulder. He testified he did not learn that his shoulder pain was caused by a neck injury until June 2001, after finding the results of diagnostic testing to his cervical area.

COMPENSABLE INJURY AND DISABILITY

The claimant had the burden to prove that he sustained a compensable injury and that he had disability as defined by Section 401.011(16). Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Those issues presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). After reviewing the record, we find sufficient evidence to support the compensable injury and disability determinations.

TIMELY NOTIFICATION

The claimant had the burden to prove that he timely notified his employer of his claimed injury under Section 409.001, or had good cause for not timely reporting the injury. The test for good cause is that of ordinary prudence; that is, whether the employee has prosecuted his or her claim with the degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances. Hawkins v. Safety Casualty Company, 207 S.W.2d 370 (Tex. 1948). Whether good cause exists in a particular case is a question of fact for the hearing officer to decide (Texas Workers' Compensation Commission Appeal No. 93184, decided April 29, 1993), and a claimant's conduct must be examined in its totality to determine whether the test of ordinary prudence was met (Texas Workers' Compensation Commission Appeal No. 93544, decided August 17, 1993). In view of the evidence presented, the hearing officer could find, as she did, that there was good cause for the claimant's failure to report the injury within 30 days of the date of injury.

The hearing officer did not abuse her discretion in determining that the claimant had good cause for failing to provide timely notice of the injury to his employer.

TIMELY FILING OF CLAIM

Section 409.004 provides that the failure to file a claim for compensation with the Texas Workers' Compensation Commission (Commission) as required by Section 409.003 (not later than one year after the date of injury) relieves the employer and the carrier of liability unless good cause exists for failure to timely file a claim or the employer or the carrier does not contest the claim. In evidence were two Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41). One was filed in October 2001 and an amended TWCC-41 was filed on May 9, 2002. There was evidence to support the hearing officer's finding that the claimant timely filed an _____, claim of injury with the Commission within one year of the injury.

We affirm the decision and order of the hearing officer.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge