

APPEAL NO. 032280
FILED OCTOBER 16, 2003

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 4, 2003. The hearing officer determined that (1) the respondent (claimant) sustained a compensable injury, including an injury to her L5-S1 intervertebral disc, on _____; (2) the claimant had disability from December 13, 2002, through March 3, 2003; and (3) the claimant had good cause for her failure to timely notify her employer of any injury. The appellant (self-insured) appealed on sufficiency of the evidence grounds. The file does not contain a response from the claimant.

DECISION

Affirmed.

INJURY AND DISABILITY

The hearing officer did not err in making the complained-of injury and disability determinations. These determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer considered the evidence and found that the claimant sustained an injury to the L5-S1 intervertebral disc, on _____, and that such injury was a cause of her inability to obtain and retain employment at her preinjury wage from December 13, 2002, through March 3, 2003. In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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).

The self-insured asserts that its interests were prejudiced because the hearing officer considered testimony and medical evidence from other cases. In the "Statement of the Evidence," the hearing officer wrote, "This [h]earing [o]fficer has heard corroborated testimony from numerous claimants, and read hundreds of medical reports, describing the same situation as put forth by the [c]laimant." While we agree that this was an inappropriate statement, we cannot say that the hearing officer relied on evidence outside of the record in reaching his determinations. We view this more as an indication that the hearing officer believed that what the claimant described was within common knowledge. As such, we cannot say that the hearing officer committed reversible error.

NOTICE

The hearing officer did not err in determining that the claimant had good cause for her failure to timely notify her employer of any injury. Section 409.001(a) provides, in relevant part, that an employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which the injury occurred. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the carrier of liability, unless the employer or carrier has actual knowledge of the injury, good cause exists, or the claim is not contested. Section 409.002. We have held that the test for the existence of good cause is whether the claimant acted as a reasonably prudent person would have acted under the circumstances. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994, citing Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). The hearing officer determined that the claimant essentially trivialized her condition until she saw her doctor on October 31, 2002. It is undisputed that the claimant reported an injury to her employer on that date. In view of the evidence, we cannot conclude that the hearing officer abused his discretion by finding that the claimant had good cause for failing to timely report her injury.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge