APPEAL NO. 94792

This appeal arises under the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 13, 1994, a contested case hearing (CCH) was held. The issues disputed at the hearing were: (1) did the appellant (claimant) sustain a compensable injury on (date of injury), (2) did the claimant timely report an injury to her employer within 30 days, or did the claimant have good cause for failing to do so; and (3) did the claimant timely file a claim for compensation with the Texas Workers' Compensation Commission (Commission), or did she have good cause for failing to do so. The hearing officer determined that the claimant, did suffer a compensable injury in the course and scope of employment, but that the claimant did not give timely notice of an injury to her employer nor did she establish good cause for her failure to give timely notice, and that the claimant did not timely file a claim with the Commission nor did the claimant have good cause for her failure to file timely. The hearing officer ordered that the self-insured is not liable for workers' compensation benefits on this claim. The claimant asserts on appeal that she did timely notify her employer, did timely file a claim, and did have good cause if she was untimely with either notice to the employer or the filing of a claim. The respondent (self-insured) did not file a response.

DECISION

Determining that sufficient evidence exists in the record to support the hearing officer's decision and no reversible error, we affirm.

The claimant and her husband were the only persons to testify at the hearing. The claimant worked for the (employer), a self-insured, as a custodian. The claimant testified that she suffered an injury to her bladder when she strained it while using a mop bucket wringer. The claimant testified that she hurt herself on Saturday, (date of injury). Later that day while at home, claimant went to the bathroom and noticed she was bleeding and was in pain. Her husband took her to the emergency room that night. She stayed at the emergency room for a couple of hours and was discharged with instructions to see her doctor on Monday. The claimant said she called her employer the next morning, (day after date of injury), and talked with her brother, Mr. V, who was also one of her supervisors. The claimant testified that she told Mr. V that she would not be in to work because she had hurt herself at work the day before and that she was not yet sure exactly what was wrong. The claimant's husband testified in support of the claimant's testimony. The claimant said Mr. V did not write up her injury but that her floor supervisor Ms. J did. The claimant said that she went to her family doctor, Dr. M, on Monday; that Dr. M gave her medication; but after the medication ran out, she felt pain. The claimant testified that Dr. M next sent her to Dr. U who diagnosed the claimant with a prolapsed bladder. Dr. U performed surgery on June 12, 1992. The claimant testified she can no longer do her old cleaning job.

Dr. M completed a "DISABILITY CERTIFICATE" dated June 4, 1992, which states that the claimant is "[t]otally disabled (unable to work)" from June 4th to "indeterminate" because he is not able to ascertain a return to work date yet. In this certificate, Dr. M writes under remarks that the claimant has stress incontinence, recurrent urinary tract infection, bladder problems, and anxiety-depression. The claimant testified that the same

day she received this certificate from Dr. M she showed it to Mr. T, her head supervisor.

An application for short term disability dated August 3, 1992, and filled out by the claimant indicates that the description of the disability is "Severe Bladder trouble" and that the cause of the disability is "Severe Stress Problem." In the "Attending Physician's Statement" attached to this application, Dr. M notes that the patient had same or similar conditions before, that the last examination was on August 25, 1992.[1] Dr. M did not answer the question asking if the injury or sickness was related to the claimant's work. In a letter dated December 2, 1993, Dr. U writes that the claimant's "present diagnosis is Bladder Prolapse with Cyctocele. This patient underwent surgery on June 12, 1992, due to Bladder Prolapse and Stress Urinary Incontinence which apparently was aggravated by the type of work she was doing."

The carrier introduced signed statements from Mr. T, Ms. J, and Mr. V, which all stated that they were aware of the claimant's illness and medical absences around the date of the incident but had no knowledge of a job related injury.

Section 409.001 requires a claimant to give notice of a work related injury to her employer within 30 days of the date an injury occurs. The claimant said she knew the injury was work related the day that it happened. Here, the claimant and her husband testified that she did give verbal notice within 30 days. No written documents were introduced in support of this and three supervisors of the claimant all denied that she ever related her illnesses to work at the time. The hearing officer determined that the claimant failed to timely notify her employer.

Even though Section 409.001 requires that the employee or a person acting on the employee's behalf must notify the employer not later than the 30th day after the date on which the injury occurs; a carrier is not relieved of liability if the employer, or a supervisor, has actual knowledge of the employee's injury or the Commission determines good cause exists for excusing the employee's failure to timely notify the employer. Section 409.002(1)-(2). There was conflicting testimony from the claimant, but sufficient evidence supports the hearing officer's finding that the self-insured did not have actual notice of the injury.

A claimant or a person acting on behalf of a claimant shall file a claim not later than one year after the date of the injury. Section 409.003. Failure to do so relieves the insurance carrier of liability unless good cause exist for failure to timely file or the carrier does not contest liability. Section 409.004. The claimant filed her claim on December 2, 1993, which is about one year and seven and one-half months after the date of injury. The claimant correctly argued at the hearing and on appeal that if an employer has notice of or knowledge of an injury, and the employer fails to file an employer's report of injury with the Commission, then the employee's one year period for filing a claim is tolled until the employer files the report. Section 409.008. But, in this case the hearing officer found that the claimant had not notified the employer within 30 days, and the employer did not have knowledge of an injury within 30 days, so this provision is inapplicable.

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[1]The dates are correct. Apparently, the attachment was added at a later date.

Good cause for delay is an issue relevant both to notice of injury and for delay in filing a claim for compensation. The Supreme Court of Texas has stated that the test for good cause is whether the claimant pursued the claim with the degree of diligence that an ordinarily prudent person would have exercised under same or similar circumstances and that this is a fact question. Hawkins v. Safety Casualty Co., 146 Tex. 381, 207 S.W.2d 370 at 372 (1948). The burden of proof rests with the claimant to establish good cause. Lee v. Houston Fire & Casualty Insurance Co., 530 S.W.2d 294 at 296 (Tex. 1975). The hearing officer, as the finder of fact, determines whether the claimant had good cause. Texas Workers' Compensation Commission Appeal No. 93544, decided August 17, 1993. The hearing officer, as the trier of fact, must look to the totality of the claimant's conduct to determine if she acted as a reasonably prudent person under the circumstances. Id.

Under the provisions of the 1989 Act, the hearing officer is the trier of fact at the CCH. The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Section 410.165(a). The trier of fact can believe all or part or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign their testimony, and then resolves the conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. As the fact finder, the hearing officer has the responsibility and the authority to resolve conflicts and inconsistencies in the evidence, to assess the testimony of the witnesses, and to make findings of fact. Texas Workers' Compensation Commission Appeal No. 92657, decided January 15, 1993. Where sufficient evidence supports a fact finder's conclusions and the findings are not against the overwhelming weight of the evidence as to be clearly wrong and unjust, then the decision should not be disturbed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In Re King's Estate, 150 Tex. 662, 664-665, 244 S.W.2d 660-661 (1951). The hearing officer found that the claimant did not timely report her injury to the self-insured. The hearing officer further found that the claimant did not have good cause for failing to timely report her injury and failing to timely file a claim for compensation with the Commission. Though the evidence was conflicting, more than sufficient evidence supports the hearing officer's determinations. The findings of fact made by the hearing officer are supported by sufficient evidence and are not against the great weight and the preponderance of the evidence. Pool v. Ford Motor Co., 715 S.W.2d 629, 634 (Tex. 1986).

Finding no reversible error and finding sufficient evidence to support the challenged findings and conclusions, we affirm the hearing officer's decision and order.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge