

APPEAL NO. 950178

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held in (city), Texas, on December 15, 1994, with (hearing officer) presiding as hearing officer. With respect to the issues before her, the hearing officer determined that the appellant (claimant) sustained a compensable injury on (date of injury); that the claimant did not report the injury to his employer not later than the 30th day after the date of the injury; and that the claimant did not have good cause for not timely reporting his injury to his employer. The claimant appealed urging that he had good cause for not timely notifying the employer. The respondent (carrier) replied arguing that the evidence is sufficient to support the determination of the hearing officer that the claimant did not have good cause for not timely notifying the employer of his injury.

DECISION

We reform the decision and order and affirm the decision and order as reformed.

The claimant testified that on (date of injury), he spent about two hours changing four tires and hubs on a house trailer that he was moving from (City 1), Texas, to (City 2), Texas. He said that it was hard work, that he had pain shooting up through his legs, but that he thought it was spasms and was not serious. He said that the employer did not have work for him as often as he needed to support his family so he sought other employment. He testified that he located employment driving a truck with another employer. He said that his permit required by the Department of Transportation (DOT) to drive a truck was not current and that he went to (Dr. V) on April 20, 1994, to get a DOT physical examination. He testified that Dr. V told him that he thought that he had hernias and sent him to (Dr. L), a surgeon, for a second opinion. He said that on April 21, 1994, Dr. L told him that he had bilateral inguinal hernias. He said that he did not know that he had the hernias before he went to the doctor, that Dr. L told him that the type of work that he did could cause the hernias, and he thought that the work on (date of injury), caused the hernias because the tingling in his legs started after changing the tires on that day. The claimant testified that a limitation was placed on his permit to drive to reflect that he could only drive and not lift things. The claimant said that he worked for the second employer and that the second employer had financial problems, paid him with insufficient funds checks, and went bankrupt. He said that when he no longer worked for the second employer and could not get work because of the limitation on his driving permit, he went to the Texas Workers' Compensation Commission (Commission) to file a claim on September 6, 1994, so that he could have surgery on his hernias. He said that he did not notify his first employer of the hernias before he filed the claim.

In her discussion, the hearing officer stated that the claimant had good cause for not reporting his hernias to his employer from the date of his injury until the doctors told him that he had hernias in April 1994, but that the good cause did not extend to September 1994, when the claimant filed his claim. In finding of Fact No. 6 the hearing

officer found "Claimant reported his injury on September 14, 1994," and in Conclusion of Law No. 6 the hearing officer concluded:

Claimant's report of the injury was September 14, 1994; this date is beyond the date a reasonably prudent person would have waited to report same and so no good cause was shown for his delay. Claimant's report of injury was untimely.

The Appeals Panel in Texas Workers' Compensation Commission Appeal No. 91030, dated October 30, 1991, adopted the standard for considering good cause for failure to timely report an injury set forth in Hawkins v. Safety Casualty Co., 146 Tex. 381, 207 S.W.2d 370 (1948). The standard set forth in Hawkins is "whether the claimant prosecuted his claim with that degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances." The court in the Hawkins case wrote that the facts indicated that the injury appeared to be trivial and not serious and said that after (Mr. H) learned of the seriousness of his injury it could not say that he was "imprudent" in delaying his claim for eight or nine days. The Appeals Panel has not set a standard that a claimant, upon learning of the seriousness of an injury, must then give notice "immediately" in order to perfect a finding of good cause for delay in giving timely notice. Texas Workers' Compensation Commission Appeal No. 93494, decided July 22, 1993. However, we have held that good cause for failure to timely notify the employer or to file the claim must continue to the date when the injured worker actually notifies the employer or files the claim. Texas Workers' Compensation Commission Appeal No. 93544, decided August 17, 1993. Good cause does not arise only from the trivial or serious nature of the injury, but from the totality of the circumstances. Appeal No. 93544, *supra*. In the case before us, the hearing officer looked to the totality of the claimant's conduct and determined that the claimant did not act as a reasonably prudent person would have acted under the circumstances. The evidence is sufficient to support her determination that the claimant did not have good cause for not timely reporting his injury.

The claimant testified that he filed a claim on September 6, 1994. The carrier introduced an Employer's First Report of Injury or Illness (TWCC-1) dated September 13, 1994, and a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated September 15, 1994. We reform Finding of Fact No. 6 and Conclusion of Law No. 6 to show that the claimant's report of the injury was September 6, 1994. The decision and order of the hearing officer, as reformed, is affirmed.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge