APPEAL NO. 950193

This appeal arises under the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 11, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that respondent (claimant) was injured in the course and scope of employment on (date of injury), did not timely report the injury, but did have good cause for not timely reporting, and has had disability from June 13, 1994, to the date of the hearing. Appellant (carrier) asserts that the great weight of the evidence shows that no injury on the job occurred on (date of injury), and that claimant did not have good cause for untimely reporting; no disability resulted with no compensable injury. The appeals file contains no reply by the claimant to carrier's appeal.

DECISION

We affirm.

Claimant worked as a maintenance operator for APAC, a segment of (employer) for over 20 years when he states that he was injured on (date of injury). At that time he testified that he was lifting a heavy saw, used in removing old paving material in roads to allow repairs to be made. Claimant's memory for dates was not outstanding; however, the memory for dates by most witnesses called by the carrier was little better. Several witnesses for carrier, including (MM), claimant's supervisor, testified that on (date of injury), the crew claimant was part of did not work on a project that included use of such a saw. The hearing officer commented after MM had testified for a period (in regard to whether there was a need for more questioning of MM) that he was satisfied the crew was not working the job described by the claimant. Other workers called to testify by the carrier, stated that claimant had not told them he had injured himself on the job. (Ms. H) testified that she works for employer and claimant inquired of her about disability compensation, apparently in June. He did not tell her his injury was work related. (Mr. E), a personnel director, readily acknowledged that claimant told him on July 5, 1994, that he was injured on the job, although claimant himself could not remember whether he had told Mr. E on that day that the injury was job related. (LW), who worked on the same crew, testified that claimant had run such a saw and that he and claimant ("two or three of us") had picked up the saw before, but he could not say when. The saw was said to weigh over 150 pounds. No one saw claimant hurt himself or heard him say that he hurt his leg or back lifting on the job.

Claimant went for medical care on May 3, 1994, to (hospital). The physical evaluation section of a medical form shows that claimant complained of knee pain. He was said to deny back injury or trauma. Claimant made it very clear at the hearing that he did not understand what the word "trauma" means. He added that his leg hurt, not his back, and he had paid no attention to the catch he felt in his back. When questioned at the end of the hearing by the hearing officer, he said that he had determined the date of injury as (date of injury) because he had gone to the hospital about a week after hurting his leg; claimant stated it could have been (date), but reasserted that he had loaded the

saw in "the (E) yard." Claimant at that time also disagreed with MM that the crew was working in (city), where the saw was not used. He kept working until June 13, 1994, when he went to (ER) and was told that his leg hurt because of his sciatic nerve, which commonly is irritated when a damaged lumbar disc presses on that nerve. Claimant stressed that the doctor at ER told him his back was hurt. Claimant said that he has been kept off work since June 13, 1994, by his doctors. This was confirmed inferentially by an entry on June 13th in which claimant was given crutches. Another medical record in August by (Dr. H) shows that he was taken off work.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. While the carrier complains in its appeal that the hearing officer "admitted to the parties that he understood that no incident with a saw occurred on (date of injury)," the hearing officer actually said during MM's testimony that he was satisfied that the crew was not working the job described by the claimant, not that no incident with a saw took place. In addition, the hearing officer questioned the claimant later about the relevant date and loading the saw, after which time the carrier did not cross-examine or request recall of MM.

While the evidence was conflicting and could have resulted in a different decision as to whether claimant was injured in the course and scope of employment, resolution of factual inconsistencies, contradictions, conflicts, and lapses of memory are the responsibility of the hearing officer. The Appeals Panel will not reverse his judgment unless it is against the great weight and preponderance of the evidence. While claimant's testimony could do little to assist his claim through its specificity (see claimant's inability to even remember that he told Mr. E of the injury as work related), the hearing officer could judge that claimant was not being evasive in his answers, but was responding in his normal manner; the hearing officer could judge his testimony, within its limits, as credible. Texas Workers' compensation Commission Appeal No.. 92167, decided June 11, 1992, states that issues of injury and disability may be resolved based on the testimony of the claimant alone. The evidence was sufficient to support the determination that claimant was injured on the job.

Carrier also attacks the determination that claimant had good cause to delay reporting his injury. In its appeal carrier emphasizes that the issue of notice should not have been reached because, it argues, there was no compensable injury. It does say, though, that the hearing officer "correctly stated that there is no provision of the Act that relieves the claimant of his statutory obligation to report a known injury within thirty days if he experiences a different symptom from the same injury at a later time." What the hearing officer said was directed at a comment of claimant's counsel that claimant had reported the injury within 30 days of being told that it involved his back; the hearing officer corrected that misstatement by observing that notice given beyond 30 days after the injury date may be governed by whether there is good cause, which is based on reasonableness; no new 30-day period inures from any date after the date of injury. The

hearing officer's finding of fact that claimant thought the injury to be trivial may be a "contradiction," as alleged by carrier, of the statement that carrier says the hearing officer made, but it is not a contradiction of the statement the hearing officer made that no new 30-day period begins in which to give notice, nor is it a contradiction of Section 409.002, which provides for a determination as to good cause when there is no timely notice.

Carrier does not assert that the finding of good cause is an abuse of discretion or is unsupported by the evidence; it asserts that "there is no legally sustainable good cause for the claimant's failure to report his injury because there is no provision in the law allowing for such a departure". The Appeals Panel has affirmed good cause determinations, made under the provision of Section 409.002, when a claimant thought the injury was trivial and was mistaken as to cause. *See* Texas Workers' Compensation Commission Appeal No. 941720, decided February 7, 1995. With evidence in the record that claimant continued to work until June 13th and with claimant testifying that he had paid no attention to his back pain, the finding of fact that claimant had good cause to delay reporting because he thought the injury trivial was not against the great weight and preponderance of the evidence. The carrier does not assert error in regard to the finding of fact that claimant exercised due diligence in not reporting until July 5, 1994.

With a compensable injury found to be affirmable, the evidence as to disability since June 13, 1994, is sufficient to support the finding of disability.

Finding that the decision and order are sufficiently supported by the evidence, the findings of fact, and the conclusions of law, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge