

## APPEAL NO. 950267

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001, *et seq.* (1989 Act). On January 18, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that the appellant (claimant) was not injured in the course and scope of employment on (date of injury), did not timely report an injury, and incurred no disability; he also found that respondent (carrier) timely disputed that the (date of injury) injury was compensable. Claimant asserts that she was injured and references an emergency room report. She adds that she did report the injury, did not quit work because of her sinus problem, and carrier had notice of her injury through the Texas Workers' Compensation Commission several months before it disputed it. Carrier replies that the decision should be affirmed.

### DECISION

We affirm.

Claimant worked as a housekeeper for a (motel). In (month year) she reported injury, which may have involved a tooth and which was not discussed in detail at this hearing. Claimant testified that on (date of injury), she fell going out a door with trash, hurting her left elbow, right knee and right hand. Claimant said that she then told the general manager, (Mr. T), that she had hurt herself falling in the presence of several employees, who claimant named. A few days later claimant quit the job, she stated, because of her pain. Claimant said she attempted to see (Dr. W) in late July or early August but was told that the doctor would not take workers' compensation patients. She added that she tried to see other doctors but was repeatedly told that they would not take workers' compensation patients. In late December 1994 she went to a hospital emergency room.

Claimant acknowledged that she had hit her knee at work on another date but had made no claim for it; she did not give a date of this occurrence. She also acknowledged that she has a sinus problem but said it did not interfere with her work. She also said she did not like heights. She has not been able to work since leaving the motel. In early August, approximately, she called the motel and asked about a company doctor, but was told she would need to speak to Mr. T about that. She pointed out that (DM) a co-worker, stated that she recalled claimant told her of an accident; DM does not give a date of accident or say what claimant injured - no mention of a knee, elbow, or hand was made; no mention was made of a tooth either, although in one of her statements DM says that claimant was bleeding. DM did offer her opinion that claimant quit work because of her sinus problem.

Mr. T in his statement says he can remember no report of any accident by claimant to him. (CR) in a statement said that she no longer worked for the motel, but she had worked as a housekeeper too and had been claimant's supervisor. She said that claimant never said anything to her of a fall or injury in either (month) or (month year). She did remember that claimant complained of her sinus. No statements were provided by any of the employees claimant had identified as being present with Mr. T when she told him of the fall.

(Ms. R) stated that she worked for the motel and had hired claimant. She knew that claimant once said she hurt her knee but did not hear of anything else hurt. She said that claimant called about a month after quitting (she also said in late July or early August) to ask about going to a company doctor and Ms. R told her Mr. T would have to address that. Ms. R told her to call back when he would be in. She said claimant did not say what she wanted to see a doctor for.

Medical documents claimant provided in evidence are limited to a bill for an x-ray of one of claimant's fingers on December 28, 1994, a note from the emergency room on December 28, 1994, referencing prescriptions and telling claimant to see (Dr. P) if not improving, a prescription for Anaprox DS dated December 28, 1994, a health insurance claim form showing "workers comp-employer unknown" for the emergency room doctor's bill, and a bill from the emergency room itself. None of these documents mentions either a knee or an elbow and gives no reference to a date of injury or any diagnosis.

Evidence in regard to carrier's dispute of the compensability of the (month) injury included an employer's first report of injury dated August 29, 1994, and carrier's notice of disputed claim dated November 4, 1994 (received by TWCC on November 7, 1994). Carrier disputed the date it received notice, in part by introducing a copy of the same employer's first report with its received stamp on it showing date of receipt as November 4, 1994.

The carrier also introduced an employer's report of injury dated November 4, 1994, which gave a date of injury as (date of injury). (Ms. B) testified that she was an adjuster for the carrier and carrier was processing a claim for injury to claimant in (month) which was not disputed. She said that carrier first heard of a (date of injury) injury when it received a notice for a benefit review conference, which was received in late October or early November.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. He could question why claimant waited over six months to go to an emergency room after the fall she describes. He could give more weight to Mr. T's statement that claimant did not report injury to him than to claimant's testimony that she did; he could observe that claimant provided no statement from any other person she said was present and did not indicate that she made an effort to obtain such statements but had been thwarted in her attempts. He could give weight to CR's statement that claimant gave no indication of injury to her when they worked together and note that CR no longer worked for the motel. He could also consider that no medical document even says that claimant's finger, which was x-rayed, was injured, and no document mentions her elbow or knee, which claimant asserts were injured too. The evidence sufficiently supported the hearing officer's determinations that claimant did not show a compensable injury occurred on (date of injury), did not give timely notice, and did not have disability therefrom.

The evidence provided as to the notice the carrier received of an injury on (date of injury), shows that the only notice in writing received by the carrier over 60 days before the Commission received its dispute on November 7, 1994, was the August employer's report which does not give a date of injury. With another injury claimed by claimant, the evidence sufficiently supported the hearing officer's determination that carrier disputed compensability within 60 days of receiving notice thereof.

Finding that the decision and order set forth at the end of the hearing officer's decision are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

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Joe Sebesta  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge