

APPEAL NO. 950404

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 2, 1994, a hearing was held in (city), Texas, with (hearing officer) presiding. She determined that respondent (claimant) was injured in the course and scope of employment on (date of injury), gave timely notice of injury, had an average weekly wage of \$144.00, and has had disability since (date). She also found that carrier did not timely contest the compensability of the injury. Appellant (carrier) only appeals the decision in regard to notice, saying that claimant gave no notice to anyone other than other workers during the 30 days after injury. The appeal file contains no reply by claimant.

DECISION

Reversed and remanded.

Claimant worked for (employer) on (date of injury), when he asserts that he sustained a hernia while lifting a polishing machine with two other workers. The issue as to notice asked whether claimant timely reported an injury, and if not, did he have good cause for reporting beyond the 30-day time limit. Claimant agreed in his testimony that he did not tell a supervisor until February 11, 1994. The ombudsman, in assisting claimant, argued that claimant had good cause for his delay in reporting until February 11, 1994.

The hearing officer in her "Statement of Evidence" points out that the claimant reported the injury "to one of the managers . . . on the date of injury." This comment appears to be the basis for her finding of fact that notice was timely given. We believe the record is unclear on this point. Claimant, while responding to questions by the hearing officer, stated that he told "(R)," but agreed that (R) was another worker, not a supervisor. The hearing officer then asked of claimant, "So other than (R), nobody else at [employer] knew from you personally that you sustained an injury?" To which claimant replied, "Another man, but -- [Mr. P], but he says he doesn't remember." The hearing officer then asked, "What is [Mr. P's] position at [employer]?" Claimant replied, "He is also a polisher." The hearing officer asked, "But he is not in a management position?" To which the claimant replied, "yes."

We are unable to conclude that the above questions and answers support a finding of fact that notice was timely given, but also are unsure whether the negative wording of the last question caused confusion; the hearing officer should develop the evidence as to whether Mr. P is or is not a management or supervisory employee of employer. If the hearing officer concludes that no report was made to a management official within 30 days, then the good cause portion of the notice issue should be addressed in the decision on remand.

The decision and order of the hearing officer are reversed and the case is remanded for consideration of the evidence regarding notice given to a person in a "supervisory or

management position" and/or, if such evidence shows notice was not timely, then finding(s) of fact should address whether good cause for late reporting was shown. Upon reconsideration of the evidence, findings of fact should be made after all the evidence is considered. Since reversal and remand necessitates issuing another decision, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which the new decision is received, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No 92642, decided January 20, 1993.

Joe Sebesta
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Alan C. Ernst
Appeals Judge