APPEAL NO. 950405

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 on January 23, 1995, in (city), Texas, with (hearing officer) presiding as hearing officer. Addressing the disputed issues, he determined that the appellant (claimant herein) did not suffer a compensable low back injury on (date of injury), as claimed, and that the claimant without good cause failed to timely report the claimed injury. The claimant appeals expressing her disagreement with these determinations. The respondent (carrier herein) replies that the decision and order of the hearing officer are supported by sufficient evidence and should be affirmed. Unless otherwise indicated, all dates are in 1994.

DECISION

We affirm.

The claimant worked as a sales secretary for the employer. Her duties primarily involved recording and filing invoices. She testified that in the afternoon of (date of injury), while picking up three boxes of invoices for filing, she experienced pain in her back that felt like a pull. She said she told her supervisor, (Ms. F), that same day that she injured her back. Ms. F reportedly told her that the pain would pass. She apparently lost no time as a result of this incident. About ten days later, she said she went to see (Dr. Z), but only talked to a person in his office who told her to get a report of the accident from her employer before she saw Dr. Z. She said she waited this long because she did not know the employer had workers' compensation insurance and had no money to pay her share of the cost of the visit under the employer's group health coverage. The claimant said she eventually saw Dr. Z on November 29th, but introduced no medical records of the visit or of any other treatment. She also testified that a fellow employee, (Ms. R), witnessed the injury and told her to "be careful." The claimant stated she again reported the injury to Ms. F on October 11th, during a meeting.

Ms. F testified that the claimant's job involved entering invoices into a computer and sometimes filing the invoices. She said filing is only done between the first and tenth of a month and that no filing was done on (date of injury). According to Ms. F, another employee was on vacation on this date and no one else would have had the time to do filing. Computer-generated records of invoices introduced into evidence for (date of injury), reflect that the claimant was invoicing that day. Ms. F denied being told by the claimant on (date of injury) that she injured herself and the first time she was told of an injury was on October 1st in connection with a conversation about an incident involving the claimant's husband and a customer. The meeting on October 11th, according to Ms. F, was called because the employer received an inquiry from the Texas Workers' Compensation Commission (Commission) about an injury.

(Ms. V), the personnel manager, testified that she got an inquiry about the claimant from the Commission on October 8th concerning an alleged injury on (date of injury). She

therefore approached the claimant for more information and completed an Employers' First Report of Injury or Illness (TWCC-1) on October 11th as a result of the meeting with the claimant.

In a transcription of a telephone conversation, Ms. R is recorded as saying that filing was done in the first few days of (month) and (month) and that the claimant never complained to her about an injury on (date of injury). She did not observe the claimant hurt herself on that date.

The claimant in a worker's compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether an injury occurred as claimed is a question of fact for the hearing officer to decide, and in this case, could be established by the testimony of the claimant alone, if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The evidence in this case was obviously in stark contrast. The claimant insisted she hurt her back lifting bundles of invoices for filing. The witness identified by the claimant did not confirm her version of events and the supervisor was equally adamant that no filing took place on the date of the alleged injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165. As fact finder, he may believe all, part or none of the testimony of any witness. An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629 (Tex. 1986). The hearing officer obviously did not find the claimant persuasive in her account of an injury on (date of injury). Having reviewed the record in this case, we conclude that the decision of the hearing officer that the claimant did not suffer an injury in the course and scope of her employment on (date of injury), is supported by sufficient evidence. For this reason we will not substitute our judgment for that of the hearing officer.

Section 409.001 provides that an employee shall notify the employer of an injury not later than the 30th day after the date on which the injury occurred. Failure to do so relieves the employer and carrier of liability in the absence of actual knowledge of the injury by the employer or upon a finding by the Commission of good cause for failure to give such notice. Whether the notice is timely given is a question of fact for the hearing officer to decide. The claimant testified she reported her injury to Ms. F on the day it occurred. Ms. F denied this and said she did not find out anything about an (date of injury) injury until October 1st when it was mentioned in connection with a dispute over an incident at work involving the claimant's husband. The hearing officer resolved this credibility issue against the claimant

and we decline to reverse it on appeal. In her appeal, the claimant also suggests she had good cause for delaying her notice of injury "because of company disorganization and lack of information not given to me immediately I missed date deadlines." Conceding for purposes of this appeal that this contention was raised at the hearing, we do not believe that the hearing officer erred in declining to find that these reasons amounted to good cause. *See* Texas Workers' Compensation Commission Appeal No. 94050, decided February 25, 1994. Any good cause must exist up to the time notice is given. Texas Workers' Compensation Commission Appeal No. 93494, decided July 22, 1993. There was no evidence from which to conclude that, even if these contentions amounted to good cause, the good cause continued until October when the claimant gave notice of her injury.

The decision and order of the hearing officer are affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge