APPEAL NO. 950414

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 (CCH) was held on October 5, 1994, in (city), Texas. (hearing officer) issued the decision and order as hearing officer in this case. The issues at the hearing were whether the appellant (claimant herein) sustained a compensable injury on (date of injury), and whether she gave timely notice of this injury to her employer or had good cause for failing to give timely notice. The hearing officer determined that the claimant did sustain a compensable injury to her right shoulder on or about (date of injury), but that she, without good cause, did not timely report the injury and the employer did not have actual knowledge of the claimant's work-related injury until May of 1994. The claimant appeals only that part of the decision of the hearing officer regarding notice of injury arguing that it is against the great weight and preponderance of the evidence. The respondent (carrier herein) replies that the decision and order of the hearing officer are supported by sufficient evidence and should be affirmed.

DECISION

We reverse the decision and order of the hearing officer and render a decision that the claimant gave timely notice of her compensable injury to her employer.

The determination of the hearing officer that the claimant sustained a compensable right shoulder injury while reaching over her head to place a spool of thread on a machine has not been appealed by either party and has become final. Section 410.169. Although claimant and carrier stipulated (date of injury), as the date of injury, claimant testified that she was not sure of the exact date of her injury.

The claimant said she reported her injury to (Mr. C), the head supervisor, before she visited the doctor on July 29, 1993. With regard to this notice, the following questions were asked on direct examination and responses given by the claimant:

Q.Describe how you told [Mr. C].

A.I just told him my arm was hurting and I was going to go to the doctor.

Q.Did he ask you why it was hurting?

A.I don't remember our--every word of the conversation.

* * * *

Q.Did he--in the description that you did give him, was it a description of the circumstances that surrounded the injury

A.I'm sure--yes sir, I think so.

On cross-examination, the claimant responded as follows:

Q.Okay. Now, when was the first time after this incident that you talked to a supervisor about your pain?

A.I think it was about three days.

Q.And who was that?

A.[Mr. C].

* * * *

Q.And what did you tell [Mr. C]?

A.I can't remember the exact words. I think I told him my arm was hurting and I needed to go to the doctor.

Q.And did he ask you why it's hurting?

A.I suppose.

Q.But you don't have any recollection of the conversation?

A.(Witness nods negatively.)

Q.You don't remember if you told him anything about the--that specific incident three days earlier?

A.I know I told him that I hurt my arm or my arm was hurting and I had to go to the doctor. I don't know my exact words.

When the claimant returned from the doctor, she said she told Mr. C that the doctor said it was a bone spur and arthritis and when asked if she told Mr. C then that her condition was related to work, she said "I don't know." Mr. C apparently then transferred the claimant to a new position.

On October 29, 1993, after arthroscopic surgery on the right shoulder, the claimant signed an employer's disability claim statement in connection with seeking a non-work-related disability in which she stated that her condition was not work related.

Mr. C testified that he was not aware that the claimant was contending that she had a job-related injury until May 1994 after the claimant's non-work-related disability benefits expired and claimant was terminated. He said he did not recall if he ever asked her if her arm pain was work related and reassigned her to a new job on July 30, 1993, after she returned from the doctor, not to accommodate any injury but to preserve the claimant's employment status from possible lay-off because of lack of work.

(Mr. F), the claimant's immediate supervisor, testified that the claimant told him on July 28, 1993, that she had a doctor's appointment the next day. He said he asked her if the appointment was related to work "and she couldn't identify the pain with any specific incident that happened at work. She did feel like it might have been due to being on a new job." He further testified that if the claimant indicated to him that her problem was a result of a specific event at work, he would have filled out an accident report. He also identified a note of a communication he had on July 28, 1993, with the claimant in which he wrote: "Has had the pain a couple of weeks but assumed it was soreness due to job change from entering [a job description] to cabling [a job description]."

Sections 409.001(a) and (b) provide that an employee shall notify the employer of an injury not later than the 30th day after the date on which the injury occurs and that the notice is to be given to an employee of the employer who holds a supervisory or management position. Section 409.002 provides in part that the failure to notify an employer as required by Section 409.001(a) relieves the employer and the carrier of liability unless the employer or the carrier have actual knowledge of the injury or the Texas Workers' Compensation Commission (Commission) determines that good cause exists for failure to provide notice in a timely manner. Whether notice of an injury has been timely given is a question of fact for the hearing officer to decide and notice is sufficient if it reasonably apprises the employer of general nature of the injury and that it is work related. DeAnda v. Home Insurance Co., 618 S.W.2d 529 (Tex. 1980). It has been pointed out that the notice requirement is satisfied if the notice:

> in some measure contained the following information: the name of the employee and some indication that he or she has been injured; some indication of the nature of the injury; some indication as to when and where the injury happened and adequate information to identity the employer.

Cadengo v. Compass Insurance Company, 721, S.W.2d 415 (Tex. App.-Corpus Christi 1986, no writ). And we have also stated, in reliance in DeAnda, *supra*, that the sufficiency of the notice "should be liberally determined because the purpose of notice is to allow prompt investigation of facts underlying an injury". Texas Workers' Compensation Commission Appeal No. 93512, decided August 2, 1993. There is no requirement to specify the exact nature of the injury, nor is the claimant required to advise the employer what specific event caused the injury, but only that it is job related. The burden is on the

claimant to establish the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ).

In the case now appealed, Mr. F testified that the claimant did not identify her pain with a specific incident at work, but did "feel like" it had something to do with her work. This is confirmed in his notes made at the time the claimant communicated her feelings on this matter to him. Mr. F and other carrier witnesses sought to render this information ineffective as notice because it was not tied to a specific incident at work. The information as related by Mr. F, however, went far beyond a mere statement of pain which in Texas Workers' Compensation Commission Appeal No. 92357, decided August 31, 1992, a case relied on by the carrier, was found not to constitute adequate notice, to encompass a claimed connection between the affected body part and work. We do not believe that this report of injury was legally insufficient simply because it did not relate to a specific incident. To the contrary, we believe it was sufficient because it gave notice to the employer of the general nature of the injury and that it was work related. This information was sufficient to enable a prompt investigation to be made by the carrier into the circumstances of the claimed injury. Having reviewed the record in this case, we conclude that the great weight and preponderance of the evidence establishes, contrary to the decision of the hearing officer, that the claimant gave adequate and timely notice on July 28, 1993, of her injury of (date of injury).

For the foregoing reasons, we reverse the decision and order of the hearing officer on the issue appealed and render a decision that timely notice of injury in compliance with the 1989 Act was given.

Alan C. Ernst
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. While there is evidence that would support a determination by a fact finder that the claimant timely reported her injury to the employer; in my opinion, the determination of the hearing officer that the claimant did not timely report her injury is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. I would affirm.

Tommy W. Lueders
Appeals Judge