APPEAL NO. 950430

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), a contested case hearing was held in (city), Texas, on December 14, 1994, and February 9, 1995, (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) was injured in the course and scope of his employment, that he did not properly notify his employer of his injury within 30 days, that the claimant established good cause for the failure to timely notify, and that he had disability. The appellant (carrier) appeals only the issue of good cause for failure to timely notify urging the hearing officer erred as a matter of law. No response has been filed.

DECISION

Finding error as a matter of law, we reverse and render.

According to findings of the hearing officer which are not on appeal, the claimant, a general maintenance man, sustained a compensable injury when he twisted his right arm while drilling above his head at work on (date of injury). The claimant told a carpenter (Mr. P) with whom he was working about the incident and, pursuant to that carpenter's advice, subsequently told another carpenter (Mr. R). Both of Mr. P and Mr. R had worked for the employer longer than the claimant and the claimant apparently thought he could properly report an injury to them. The claimant first saw a doctor, apparently on his own, on March 22, 1993. He did not report the injury to the supervisory foreman or to anyone else, and, according to the evidence, the employer first received notice of the injury on May 31, 1994, when the claimant reported it to the employer. The evidence also showed that the claimant had very limited, if any, reading and writing skills and the hearing officer found that claimant had a limited formal education and can neither read nor write. The hearing officer also found, and is supported by the evidence, that neither Mr. P or Mr. R were supervisors over the claimant and that neither reported the injury to a supervisor. The hearing officer also found that claimant had reasonably concluded that one or both Mr. P and Mr. R controlled his work at the time of the injury. Finally, on the issue on appeal, the hearing officer found that the claimant "acted as a reasonably prudent person would have acted under the same or similar circumstances when he reported his injury to [Mr. R] on March 22, 1994, in thinking he had properly reported his injury."

The conclusion of law as applied to these findings with which the carrier asserts error is:

Claimant established that good cause exists for his failure to timely notify Employer of his compensable injury of (date of injury).

From the evidence and his findings, it appears that the hearing officer's conclusion is footed on the claimant's educational limitation and his "reasonable" belief that Mr. P or Mr. R, or both, controlled his work, and that this was somehow good cause for not timely notifying the employer of his injury. This we find to be error. The notice requirements of

Section 409.001 provide in pertinent part that an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date (of the injury) and that the notice required can be given to the employer or an employee of the employer who holds a supervisory or management position. It is an objective, factual matter whether a person occupies a supervisory position and one's beliefs do not alter the requirements. We rejected this notion in Texas Workers' Compensation Commission Appeal No. 950396, decided April 25, 1995. In that case the claimant was found to have reported his injury to a nonsupervisory person but that a reasonable person in claimant's circumstances could have reasonably believed that the individual was a person in a supervisory or management position. In reversing the decision we stated that neither the facts or the law support the determination that the claimant "had good cause for not timely reporting his injury, based upon his reasonable belief that Mr. RM was a supervisor."

Section 409.002 provides that failure to notify as required by Section 409.001 relieves the employer and carrier of liability unless "(2) the commission determines that good cause exists for failure to provide notice in a timely manner." In Appeal 950396, *supra*, we discussed Texas case law and our prior decisions on good cause as relates to untimely notice. Good cause may be based upon the initial belief that an injury was trivial, or mistake as to the cause of injury, reliance upon representations of the employer or carrier, minority and incapacity. Texas Workers' Compensation Commission Appeal No. 94050, decided February 25, 1994. We find no precedent or other authority that limited formal education or a belief that a coworker is a supervisor can be considered as good cause for failure to timely notify. As we read the notice requirements regarding notification to a supervisory or management employee, it is the fact of occupying such a position and not a subjective belief by someone that a worker holds a supervisory or management position. Appeal 950396, *supra*. Further, the educational level of a claimant would not affect the factual matter of whether an employee, in fact, holds a supervisory or management position.

For the foregoing reasons the decision is reversed on the good cause issue and a new decision rendered that the claimant has not established that good cause exists for his failure to timely notify the employer of his compensable injury of (date of injury). The order to the carrier to pay medical and income benefits is reversed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Alan C. Ernst
Appeals Judge