

APPEAL NO. 950452

This appeal arises under the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). On February 24, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. She determined that appellant (claimant) did not sustain a compensable injury on (date of injury), did not timely report an injury without showing good cause for delay, and did not have disability. Claimant asserts that he was injured on the job and takes exception to the finding of fact indicating he provided no reason for failing to timely report his injury; he adds that he has disability. Respondent (carrier) replies that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) for a number of years when during the first week in (month year), he states that he felt pain in his back as he arose from a kneeling position he had taken to reposition an air hose on a printing press.

Claimant agreed in his testimony that for months he only told employer that his back hurt; he did not relate it to the job until September 1994. The hearing officer asked him when he thought his injury was serious; claimant answered at the time he could not walk straight. He earlier had testified that he worked for three days after feeling the pain and then the pain worsened and "I had to walk with a stoop." At that time he also decided to go to a doctor. In addition, statements from employer indicate that claimant did not report an injury until September. Claimant's only other reason for not reporting an injury earlier was his reference to having been so engrossed in his job, he had lost vacation time in the past. However, in this case claimant agreed that he last worked for employer on (date), so even if commitment to remaining on the job were a valid basis for finding good cause, it does not apply to the time period after the stated injury. The evidence sufficiently supports the determination that claimant did not timely notify his employer, without good cause for his delay.

On (date), claimant saw (Dr. A). Dr. A's notes at that time indicate:

States pain began at [right] hip & radiates down [right] leg. Has [history] of back strain. Denies recent trauma or injury.

Claimant was referred to an orthopaedic surgeon, (Dr. J), who first saw claimant on March 16, 1994. Claimant was noted to complain of right leg pain, hip pain, and back pain. Dr. J adds:

This all started 4 weeks ago with a spontaneous and gradual onset. He gives no specific history of any trauma or injury.

Claimant was 70 years old at the time he stated he was injured. The record contains evidence indicating that claimant was encouraged to retire since his condition made work questionable. The record indicates that claimant's notification to employer in September came after claimant had sought unemployment benefits, which were only granted in a very limited amount, due to his receipt of Social Security benefits.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She could question whether claimant hurt himself at work when neither doctor he saw in the weeks thereafter notes a report of a work injury. See T.E.I.A. v. Smith, 592 S.W.2d 10 (Tex. Civ. App.-Texarkana 1979, no writ). In addition, she could consider claimant's past medical history relating to his back condition in conjunction with Dr J's report as to onset. The evidence sufficiently supports the determination that claimant did not show he hurt his back at work. With the evidence supporting a finding of fact that no compensable injury was shown, the finding that no disability resulted is also sufficiently supported because disability under the 1989 Act is dependent on the existence of a compensable injury.

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

Joe Sebesta
Appeals Judge

CONCUR:

Lynda H. Neseholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge