APPEAL NO. 960418

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 February 9, 1996. The issues at the hearing were whether the appellant (claimant) timely filed a claim for compensation with the Texas Workers' Compensation Commission (Commission) or had good cause for not doing so or did the respondent (carrier) fail to contest the claim. The hearing officer determined that the claimant failed, without good cause, to timely file her claim and that the carrier timely disputed compensability on this basis. The claimant appeals, expressing her disagreement with the good cause determination and arguing that she had one year from the time she knew she had a work-related injury to file her claim. The carrier replies that the decision and order of the hearing officer are correct and should be affirmed. The determination that the carrier timely disputed compensability has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant worked as an office clerk. She testified that on _____, she bumped the wires coming from a wall clock and the clock fell, striking her upper back between the neck and right shoulder. A bruise developed and she had muscle spasms from time to time, but she considered the injury trivial and never lost any time. She also testified that the manager observed the incident. Approximately nine months later, the claimant attended an informational talk at the work site given by a carrier representative. In this talk, according to the claimant, the representative discussed the claims process, and mentioned that an injured employee generally has one year to file a claim for workers' compensation benefits. After the talk, the claimant said she discussed her situation with her manager and tried to get in touch with the speaker, but never could. Meanwhile, her muscle spasms got worse and she started looking for a free consultation with a chiropractor. She set an appointment with Dr. W, D.C., for the week of September 18, 1995. On the previous Sunday, September 17, 1995, the claimant said, she sat in a lawn chair for a lengthy period at a church function and her muscles began to hurt very badly. She then asked Dr. W for an earlier appointment and he saw her on (date she knew her injury was work-related). Dr. W diagnosed a dislocated rib. He further said that stress caused the muscles to tighten and irritate the rib and that the clock probably knocked the rib out of place. The claimant reported Dr. W's opinion to her supervisor and contacted the employer's home office.

On September 20, 1995, the home office telefaxed report forms to be filled out and returned by the claimant, which she apparently did that day or the next, and was told the carrier would contact the claimant. The claimant said she briefly spoke with an adjuster within a week and tried to get in contact with the adjuster later to approve medical care by Dr. W, but the adjuster was on vacation. The claimant said she spoke with an unidentified assistant who told her he could not make a decision, but as far as he could see, she should

go ahead with the treatment. The treatment was completed in November 1995. Though not clear when this call took place, the carrier submitted to the Commission a Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21) on November 14, 1995, disputing this claim based on the claimant's failure to timely file a claim within one year of the date of injury and has refused to pay for the treatment.

According to Commission records, the claimant called the Commission on November 21, 1995, to ask why the claim was denied. She was told the reason was that she did not file a claim within one year of the injury. The claimant then asked for a benefit review conference (BRC). In a letter of November 22, 1995, with an enclosed information pamphlet, the Commission advised the claimant: "Be sure to file a claim with the Commission within one year of your injury, using Form TWCC-41. IF YOU HAVE ALREADY FILED FORM TWCC-41, PLEASE DO NOT FILE IT AGAIN." An Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) was enclosed with the letter. The claimant testified that she received this letter on December 8, 1995. Although she admitted speaking with an ombudsman twice about the TWCC-41, she said that she did not fill out the TWCC-41 enclosed with the letter because she thought she had a year from (date she knew her injury was work-related), the date she knew her injury was work-related, not from _____, the date of the injury; she was busy at work with the approaching year-end holiday season; she was not aware that the carrier and the Commission were separate entities; she did not know for sure whether she had already filed a TWCC-41 and did not want to submit a duplicate against the advice in the letter; and, because a BRC was scheduled for December 27, 1995, she said, she decided to wait until then to complete the TWCC-41. The claimant signed and dated the TWCC-41 on December 22, 1995. It was date-stamped as received by the Commission on December 27, 1995, the date of the BRC.

Section 409.003 provides essentially that, for injuries other than an occupational disease, an employee is required to file a claim for compensation for an injury not later than one year after the date the injury occurred. Failure to do so, absent good cause, relieves both the carrier and employer of liability for workers' compensation benefits. The claimant has the burden of proving good cause, and good cause must continue up to the time the claim is actually filed. *See* Texas Workers' Compensation Commission Appeal No. 952130, decided January 8, 1996. The test for the existence of good cause in failing to timely file a claim is that of ordinary prudence, that is, whether the claimant "prosecuted his claim with the degree of diligence that an ordinarily prudent person would have exercised under the same of similar circumstances. Consequently, whether [a claimant] has used the degree of diligence required is ordinarily a question of fact to be determined by . . . the trier of facts." Hawkins v. Safety Casualty Company, 146 Tex. 381, 207 S.W.2d 370 at 372 (1948). During the time a claimant believes in good faith that the injury is not serious, or if an employer or carrier representative misleads an injured worker into thinking no more action need be taken to perfect the claim and benefits are paid, a claimant may have good cause for not timely filing a claim. *See* Texas Workers' Compensation Commission Appeal

No. 94274, decided April 18, 1994.

In the case we now consider, any good cause for failure to file a claim based on the claimant's trivialization of her injury effectively ended on (date she knew her injury was work-related), when Dr. W discussed her condition with her and both attributed that condition to the injury more than a year earlier. While the claimant need not have immediately filed the claim, she had to act with continuing due diligence to file the claim. Regardless of what the claimant may have believed or been led to believe earlier, the hearing officer found that the claimant was in contact with the Commission about her claim as early as November 21, 1995; that she had discussions with her ombudsman; and that she received written notice from the Commission on December 8, 1995, specifically addressing the need for her to file a TWCC-41. Yet she did not do so until December 27, 1995, at the BRC. From this, he concluded that she did not have continuing good cause to delay filing. While no express findings were made with regard to the claimant's often repeated assertion that she believed she had one year from the time she knew her injury was work related to file a claim, we observe that, generally, ignorance of the law is no excuse for failure to comply with it. *See* Texas Workers' Compensation Commission Appeal No. 94269, decided April 20, 1994. We also note the claimant was not asserting a repetitive trauma injury. Therefore, the statutory provision that the date of injury is the date the claimant knew or should have known her injury may be work related does not apply. *See* Section 409.001(a)(2).

The hearing officer, as fact finder, was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). As an appeals body, we will reverse the factual determinations of a hearing officer only if they are so against the great weight and preponderance of the evidence as to be clearly unjust and erroneous. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). In her appeal, the claimant again raises the belief that she thought she had more time to file a claim and that the employer was aware of her injury. Neither this misconception, nor the question of what the employer knew, is directly relevant to the disputed issues at the CCH. Having reviewed the record, we are satisfied that there was sufficient evidence to support the determinations of the hearing officer that the claimant failed, without good cause, to timely file her claim with the Commission and that carrier timely contested the claim on this basis.

The decision and order of the hearing officer are affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge