APPEAL NO. 980122

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 15, 1997, a hearing was held. She (hearing officer) determined that appellant (claimant) did not timely report her injury at work and did not have good cause for her delay; in addition, she determined that claimant had no disability. Claimant appears to be asserting that even after seeing a doctor on July 3, 1997, she still thought her injury was trivial; she also asserts that the notice requirement should only apply if the injury did not occur on the job; she asserts that she does have disability. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked as a kindergarten teacher for (employer), when, she said, she fell on _____, while standing on a chair reaching for a box from a shelf; she injured her elbows when they struck the top of a filing cabinet. There was no issue that an injury occurred while claimant was at work. No evidence was provided indicating that employer had actual knowledge of the injury, and claimant testified that she notified employer on July 31, 1997.

Claimant testified that although her elbows were immediately discolored and she had pain, she thought the injury was trivial until she first saw a doctor about the injury. She saw (Dr. B) on July 3, 1997, and she testified that at that time she no longer thought the injury to be trivial. She added, though, that she had medical insurance until July 31, 1997.

The hearing officer found that claimant did not have good cause for waiting until July 31, 1997, to report the injury. In her Statement of Evidence, the hearing officer pointed out that the claimant must show good cause for delay, such as thinking that the injury was trivial, and that she then must give notice within a reasonable time, citing Texas Workers' Compensation Commission Appeal No. 950428, decided May 3, 1995, which held that waiting 27 days to give notice after learning that the injury was not trivial was not a reasonable time as a matter of law.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. With claimant acknowledging at the hearing that she no longer considered the injury to be trivial as of July 3, 1997, when she saw Dr. B about it, and with claimant also stating that she then gave notice on July 31, 1997, the evidence sufficiently supports the determination that claimant did not show good cause for her delay in reporting the injury.

While claimant indicates that the carrier agreed that she was injured on the job, Section 409.001 requires that notice be given of an on the job injury and Section 409.002 then "relieves . . . the carrier of liability" if timely notice is not given unless there is either actual knowledge by the employer, good cause for delay, or the carrier does not contest the claim. The fact that both parties agree that an injury occurred on the job does not negate the notice requirement.

Disability does not exist without a compensable injury under the 1989 Act (*see* Section 401.011(16). A compensable injury is defined as an injury in the course and scope of employment "for which compensation is payable"; without meeting the notice requirements, nothing is payable since the carrier has no liability; therefore, by definition the determination of no disability is sufficiently supported.

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:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge