

APPEAL NO. 980240
FILED MARCH 23, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 6, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that he did not timely notify his employer of his alleged injury without good cause for his failure to do so; and that he did not have disability within the meaning of the 1989 Act because he did not sustain a compensable injury. In his appeal, the claimant argues that those determinations are against the great weight and preponderance of the evidence, pointing to the evidence he believes proves his case. In its response, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was working as a custodian for the self-insured. He stated that he and Mr. R were cleaning the cafeteria on _____, when he grabbed a table to fold it up and move it. He stated that the table had a "bad shock" which made it difficult to fold and that as he was attempting to fold the table, he felt a "pop" in his low back. He stated that Mr. R saw the incident happen and came over to him to ask if he was okay. The claimant testified that he was not able to straighten up for about 10 minutes and that shortly thereafter Mr. P, his supervisor, came to the cafeteria and the claimant reported his injury to him. The claimant stated that Mr. P replied "yeah, yeah, yeah" and kept on walking. The claimant stated that a couple of days later his pain had not improved as he thought it would, so he told Mr. P about his injury and again Mr. P did not do anything in response to the claimant's report of injury. On August 27, 1996, the claimant went to a clinic for treatment. He stated that he told the doctor at the clinic that he had sustained a work-related back injury on _____; however, as the hearing officer noted in her decision, the clinic's records refer to a 1988 date of injury. The claimant acknowledged that he had sustained a prior compensable injury to his back in 1988. He stated that he was off work until 1991 because of that injury and that after he recovered, he began to work regular duty as a custodian for the self-insured. He testified that he was able to work in that position for four to five years without any problems. On cross-examination, the claimant acknowledged that he continued to work after the alleged _____ injury until April 1997. He acknowledged that in the period between October 1996 and April 1997, he had had several meetings with the self-insured, where he and his union representative had discussed with school district representatives the claimant's frustration with his job and the fact that he was not being promoted.

Mr. R testified that he worked with the claimant on _____, and that he did not see the claimant hurt his back. In addition, he denied that the claimant had

ever told him that he had been injured while working for the self-insured. Mr. R further testified that he never saw the claimant hurt himself on any other day and that he could not recall the incident described by the claimant as ever happening. Mr. P testified that he was the claimant's supervisor on _____ and that the claimant did not report an injury to him on that date. Rather, Mr. P maintained that he did not learn that the claimant was alleging that he had sustained a workers' compensation injury until an April 1997 meeting concerning the claimant's dissatisfaction with his job. Mr. P maintained that the claimant had never reported to him that he had sustained an injury while working for the self-insured.

As noted above, the medical record from the clinic where the claimant first sought treatment following this alleged injury refer to a 1988 date of injury. Eventually, the claimant began treating with Dr. K, a chiropractor, to whom he was referred by his then attorney. Dr. K opined that the claimant had sustained a new injury to his back. However, the claimant acknowledged that at the benefit review conference Dr. K had admitted that he did not review the claimant's medical records from his 1988 injury in forming his opinion that the claimant had sustained a new injury.

The hearing officer determined that the claimant did not sustain a compensable injury on _____, and that he did not timely notify his employer of his alleged injury. There was conflict in the evidence on those issues and each question presented an issue of fact for the hearing officer to resolve. The claimant testified that he injured his back moving a table in the cafeteria, that Mr. R witnessed the incident, and that he reported his injury to Mr. P on the day it happened. Mr. R testified that he never saw the claimant sustain an injury while working for the self-insured and that the claimant never told him that he had been injured at work. Mr. P denied that the claimant had ever reported an injury to him, stating that he did not learn that the claimant was alleging a workers' compensation injury until April 1997. It was for the hearing officer, as the sole judge of the relevance, materiality, weight and credibility of the evidence under Section 410.165(a), to resolve the conflicts in the evidence, including the testimony of the claimant, which need not be accepted at face value but only presents a question of fact for the hearing officer. Bullard v. Universal Underwriters Ins. Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The hearing officer's determinations that the claimant did not sustain a compensable injury and did not timely notify his employer of his alleged injury are supported by the testimony of Mr. R and Mr. P, which the hearing officer was free to credit over the testimony of the claimant. Nothing in our review of the evidence demonstrates that the injury and notice determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for reversing them on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability, as the existence of a compensable injury is a necessary prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge