

APPEAL NO. 031671
FILED AUGUST 6, 2003

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 May 27, 2003. The hearing officer decided that the appellant/cross-respondent's (claimant) compensable injury of _____, does not extend to include a compensable right-sided herniation at L5-S1, and the respondent/cross-appellant (self-insured) is relieved from liability because of the claimant's failure to timely file an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) with the Texas Workers' Compensation Commission (Commission) within one year of the injury as required by Section 409.003. The claimant appealed the hearing officer's extent-of-injury determination based on sufficiency of the evidence grounds and puts forth ignorance of the rules as good cause for not filing the claim within the one year time frame. The self-insured urges affirmance of the hearing officer's decision, but appeals a factual finding by the hearing officer that the claimant has a right-sided herniation at L5-S1.

DECISION

Affirmed.

Section 409.003 requires that a claimant file a TWCC-41 with the Commission not later than one year after the date of injury. Pursuant to Section 409.004, failure to do so will relieve the carrier of liability. The claimant had the burden to prove that she filed her claim of injury within one year of the date of her injury pursuant to Section 409.003, or had good cause for not timely filing. The test for good cause is that of ordinary prudence; that is, whether the employee has prosecuted his or her claim with the degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances. Hawkins v. Safety Casualty Company, 207 S.W.2d 370 (Tex. 1948). We review the hearing officer's determination of whether or not good cause exists under an abuse of discretion standard. In view of the evidence presented, the hearing officer could find, as he did, that there was no good cause for the claimant's failure to file a claim within one year of the date of injury.

The issue of whether the claimant has a right-sided herniation at L5-S1 presented questions of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on this issue. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer determined that the claimant's work-related injury includes the herniation, but since the claimant failed to timely file a TWCC-41, the herniation is not compensable. Nothing in our review of the record

reveals that the hearing officer's determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the challenged determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RM
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge