

APPEAL NO. 040802
FILED JUNE 4, 2004

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 March 15, 2004. The hearing officer determined that the respondent/cross-appellant (claimant herein) sustained an injury in the course and scope of his employment on _____; that the claimant, without good cause, failed to timely report his injury relieving the appellant/cross-respondent (carrier herein) of liability; that the claimant was unable to obtain and retain employment, but did not have disability because the carrier is relieved of liability; and that the claimant did not make an election of remedies. The carrier appeals the determinations that the claimant sustained an injury in the course and scope of his employment; that the claimant was unable to obtain and retain employment; and that the claimant did not make an election of remedies. There is no response from the claimant to the carrier's request for review in the appeal file. The claimant appeals the determinations that the claimant did not timely report his injury; that the claimant did not have good cause for not timely reporting; and that the claimant did not have disability. The carrier responds that the hearing officer did not err in determining that the claimant failed to report his injury without good cause for not doing so.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

As the outcome of this case turns upon the issue of timely report of injury, we shall discuss this issue first. The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. The 1989 Act provides that a determination by the Texas Workers' Compensation Commission (Commission) that good cause exists for failure to provide notice of injury to an employer in a timely manner or actual knowledge of the injury by the employer can relieve the claimant of the requirement to report the injury. Section 409.002. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). To be effective, notice of injury needs to inform the employer of the general nature of the injury and the fact it is job related (emphasis added.) DeAnda v. Home Ins. Co., 618 S.W.2d 529, 533 (Tex. 1980). Thus where the employer knew of a physical problem but was not informed it was job related, there was not notice of injury. Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied). Also, the actual knowledge exception requires actual knowledge of an injury. Fairchild v. Insurance Company of North America, 610 S.W.2d 217, 220 (Tex. Civ. App.-Houston [1st Dist.] 1980, no writ). The burden is on the claimant to prove actual knowledge. Miller v.

Texas Employers' Insurance Association, 488 S.W.2d 489 (Tex. Civ. App.-Beaumont 1972, writ ref'd n.r.e.).

In the present case, the claimant argued that the employer had actual knowledge of his injury because the claimant, who was a facility manager, knew about it and that this provided the employer with knowledge because the claimant was himself a supervisor. The claimant argues that American Casualty Company of Reading, Pennsylvania v. Martin, 97 S.W.3d 679 (Tex. App.-Dallas 2003, no pet.) (hereinafter Martin) supports this position. The carrier argues that neither Martin nor the underlying decision of the Appeals Panel in that case (Texas Workers' Compensation Commission Appeal No. 992577, decided January 6, 2000) controls the outcome of the present case. The hearing officer rejected the claimant's contention that the present case is controlled by Martin, and so do we. In Martin, the claimant was the CEO of the employer and had no supervisor above him. In effect, the claimant was the employer. In the present case, the claimant was a supervisor but did have supervisors above him. In fact, the claimant clearly recognizes that he had a supervisor to whom he could have reported the injury when he argues in the alternative that if he did not timely report he had good cause not to report a compensable injury to his supervisor because he feared reporting a compensable injury could have led to the termination of his employment. Accepting the claimant's argument would be paramount to saying that whenever any person in a supervisory capacity is injured then the employer has actual knowledge of the injury because the injured employee knew about the injury. In light of the fact the law broadly construes supervisory capacity, this would create a very broad expansion of the actual notice doctrine. From our reading of Martin, we do not think this was not the intention of the Court of Appeals in Martin, and we know it was not the intention of the Appeals Panel in Appeal No. 992577, *supra*. We find no error in the hearing officer's determination that the claimant did not timely report his injury to the employer. Nor do we find the hearing officer abused her discretion by determining that there was not good cause for the claimant's failure to timely report.

The carrier raises a number of points in its conditional cross-appeal. However, in light of our upholding the hearing officer's decision to relieve the carrier of liability, the carrier is not aggrieved by the determinations of the hearing officer that it challenges and therefore we need not address these challenges in any detail. We have reviewed the record, the decision of the hearing officer, and the carrier's conditional cross-appeal, and we perceive no error.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge