APPEAL NO. 93971

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S. art 8308-1.01 *et seq*.), a contested case hearing was held in (city), Texas, on October 7, 1993, (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) injured her wrists in the course and scope of her employment in (date of injury), and had good cause for not reporting her injury within 30 days. Appellant (carrier) urges that the hearing officer's determination that the claimant had good cause for not reporting her injury within 30 days was against the great weight and preponderance of the credible evidence and that the hearing officer applied an incorrect standard in determining good cause. No response has been filed.

DECISION

Finding the evidence sufficient to support the decision of the hearing officer, we affirm.

The issues in this case were:

(1)what is the claimant's date of injury, and

(2)did the claimant timely report an injury to her employer.

That the claimant sustained an occupational disease, carpal tunnel syndrome, was not in dispute. Section 401.011(34) includes repetitive trauma injuries within the definition of occupational disease. The claimant's duties included hand intensive work making, loading and inspecting computer tapes. She testified that she first starting noticing "tiredness of the wrists" in (date of injury), and although she knew it was related to her work, she thought it not serious, would resolve itself and that it was just "overworked wrists" that others apparently also experienced from time to time. Although she apparently did not know much about carpal tunnel syndrome, she had heard of it through general conversations with others. She stated that by May 1993, the discomfort in the wrists had become very painful, with pains shooting up her arms and that she was unable to lift up tapes. This is when she knew it was serious and that she needed to see a doctor. She reported the matter to her supervisor. Bilateral carpal tunnel syndrome was diagnosed. The claimant testified regarding not reporting the injury earlier that she did not think it was serious until May 1993 and that she did not "make a habit of going to my supervisor when something small is the matter with me." She also testified that she knew and had so stated that her wrists problems were associated with the job but that she had no idea that she had an injury, i.e., carpal tunnel syndrome.

The hearing officer found that the claimant injured her wrists at work in (date of injury) (apparently because she stated she knew her tired wrists were related to her job) but that she did not realize her injury was serious until May 1993, at which time she reported it to her supervisor. He concluded that the claimant had good cause for not reporting her injury within 30 days.

Section 409.001(a) provides that an injured employee shall notify the employer of an injury not later that the 30th day after the date on which:

(1)the injury occurs; or

(2) if the injury is an occupational disease, the employee knew or should have known that the injury may be related to the employment.

Since this was not a specific accident or incident injury situation, apparently, the hearing officer determined that the claimant knew or should have known that the ultimately diagnosed carpal tunnel syndrome may be related to the employment in (date of injury), when she first noticed some problem with her wrists and it occurred while she was working. In any event, the claimant steadfastly maintained that she did not think her wrist condition was serious until May 1993 when her condition had become considerably worse and she realized she needed to see a doctor.

Failure to timely notify an employer of an injury as required by Section 409.001(a) relieves the employer and carrier of liability unless:

(2)the commission determines that good cause exists for failure to provide notice in a timely manner . . . .

Section 409.002(2). Based upon the evidence before him, largely the testimony of the claimant, the hearing officer determined that good cause was shown.

Good cause for failure to timely report an injury can be based upon an injured worker's not believing the injury is serious and on an initial assessment of an injury as being trivial. *See* Texas Workers' Compensation Commission Appeal No. 91030, decided October 30, 1991. Good cause exists for not giving notice until the injured worker realizes the seriousness of his or her injury. Baker v. Westchester Fire Insurance Company, 385 S.W.2d 447, 449 (Tex. Civ. App.-Houston 1964, writ ref'd n.r.e.). Good cause is generally a question of fact to be determined by the fact finding hearing officer. Texas Workers' Compensation Commission Appeal No. 93494, decided July 22, 1993; Texas Workers' Compensation Commission Appeal No. 93677, decided September 21, 1993. The standard for good cause is one of ordinary prudence and the belief that an injury is not serious must be based upon a reasonably prudent person standard. Hawkins v. Safety Casualty Company, 207 S.W.2d 370, 372 (Tex. 1948). The test previously applied by the Appeals Panel for reversal of a determination on good cause by the hearing officer is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 91120, decided March 20, 1992.

The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Section 410.165(a). Here, the factual determination of good cause hinged largely on the testimony of the claimant. The

hearing officer obviously gave credence to her testimony and we find no basis to alter his determination. The testimony of a claimant, as an interested party, only raises a factual issue for the hearing officer. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). A claimant's testimony may be believed even to the exclusion of others. Texas Employers Insurance Association v. Thompson, 610 S.W.2d 208 (Tex. Civ. App.-Houston 1981, no writ). Even if some inconsistency could be perceived in the claimant's testimony or some conflict appeared in the evidence before the hearing officer, it was his responsibility and within his authority to resolve such matters. Garza v. Commercial Insurance Company of Newark, N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Only were we to find, which we do not, that his findings were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound reason to disturb his decision. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

We find no basis to conclude that the hearing officer applied the wrong standard in his determination on good cause. The carrier competently urged the standard to be applied in her argument at the hearing. Our review of the evidence does not lead us to conclude that the hearing officer ignored or misapplied the ordinary or reasonably prudent person standard. There was no abuse of discretion in his determination on this issue.

For the reasons set forth above, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge