APPEAL NO. 94239

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et. seq.* (1989 Act), a contested case hearing was held in (city), Texas, on January 3, 1994, (hearing officer) presiding as hearing officer. He determined that the work performed by the respondent (claimant) in furtherance of the business of his employer caused or aggravated his lumbar disc herniation and internal disc derangement, that on or about (date of injury), the claimant first knew or should have known that there may have been a correlation between the work and the pain in his back and leg (presumably the hearing officer refers to the claimant's injury), that the claimant informed a supervisor of the pain and that it may have been caused by the seat in the truck driven by the claimant and that the claimant timely filed a claim for workers' compensation. Appellant (carrier) appeals urging that the evidence is insufficient to establish that the claimant's work caused or aggravated his lumbar disc herniation and internal disc derangement, that on (date of injury), the claimant knew or should have known of the correlation between the work and the leg and back pain, that the claimant notified a supervisor that his back and leg pain may have been caused by the seat in the truck he drove and that a claim was timely filed. No response was filed.

DECISION

Not finding the great weight and preponderance of the evidence to be so contrary to the hearing officer's determinations as to render them clearly wrong or manifestly unjust, and finding that there is sufficient evidence to support the decision and order, we affirm.

The claimant, a long time employee of the Texas Department of Transportation, drove a truck during the last number of years. He states that he had a problem with the seat in the truck he drove and that it tilted. According to his testimony, he started noticing some pain in his back and leg sometime in 1990 or 1991 and that it progressively worsened. He finally went to a chiropractic doctor in early (month year) and after talking with the doctor and seeing X-rays first realized that his back condition was related to or caused by his work. Some of the extensive number of medical records admitted (many of which were not relevant) show that the claimant had been treated for back and leg pain in 1991; however, the claimant stated he did not realize that it was related to his work although he did get stiff when he drove the truck for long periods. In any event, after his visit with the chiropractor in early (month year) and becoming aware that his back and leg pain were work related, he told a supervisor in the another department, (J), about his back and that he thought the seat in the truck could have something to do with it. J told the claimant that he, the claimant, "needed to report the accident to his immediate supervisor." (Section 409.001(b) provides that notice may be given to "an employee of the employer who holds a supervisory or management position.") J indicated that the truck seat was in need of upholstery but that no frame damage was found.

The claimant was seen by a number of doctors following (month year) culminating in his undergoing back surgery. Except for intermittent periods when he attempted to work, the claimant has not returned to work on any full time status. In a statement dated July 26,

1993, one of the doctors who treated the claimant stated: "It is my opinion that it is a medical probability, that his work was a significant contributing factor to his lumbar disc herniation and internal disc derangement." According to the Commission's computer log entries admitted and considered by the hearing officer and a form letter from the Texas Workers' Compensation Commission (city) Field Office, a Form TWCC-41, Notice of Injury or Occupational Disease and Claim for Compensation, was received by the Commission from the claimant in March 1993.

To be certain, some of the medical records in evidence support a conclusion that the claimant experienced and was treated for back and leg pain prior to (month year). And, it is clear that the claimant was asserting a repetitive trauma injury (as opposed to a specific, discreet incident) to his back and leg and that he claimed to first know that the condition or injury was work related in July after his visit with the chiropractic doctor. This presented a factual question on the issue of timely notice for the hearing officer as the fact finder in a contested case hearing. The thirty day notice requirements contained in Section 409.001 for a repetitive type injury measure the date of notice as beginning when the "employee knew or should have known that the injury may be related to the employment." The hearing officer apparently found the claimant's testimony, that he did not relate the injury to his work until (month year), to be credible. Surely, there was some evidence to give rise to a reasonable inference that the claimant knew or should have known at some earlier time; however, it was not compelling. The hearing officer is free to believe the testimony of a claimant over other evidence (Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ); Texas Employers Insurance Association v. Thompson, 610 S.W.2d 208 (Tex. Civ. App.-Houston 1980, writ ref'd n.r.e.)), although he is not required to accept such testimony at face value. Bullard v. Universal Underwriter's Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The hearing officer may believe all, part or none of the testimony of a given witness. Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.); McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986). We do not substitute our judgment for that of the hearing officer where he is supported by the evidence. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994; Texas Workers' Compensation Commission Appeal No. 931148, decided February 1, 1994.

While we have held that merely sitting in a vehicle is not enough to constitute repetitive, physically traumatic activity (Texas Workers' Compensation Commission Appeal No. 93305, decided May 26, 1993), we have recognized that a compensable, repetitive trauma back injury can be sustained from driving a truck in particular circumstances. *See* Texas Workers' Compensation Commission Appeal No. 92171, decided June 17, 1991, where a truck driver sustained a back injury from being repeatedly "beat" and vibrated due to bad suspension and shock absorbers. *See also* Texas Workers' Compensation Commission Appeal No. 92135, decided May 18, 1992, where the hearing officer found a compensable repetitive trauma back injury in a claim by a school bus driver (appealed on other grounds) and Texas Workers' Compensation Commission Appeal No. 94010, decided February 4, 1994). *Compare* Texas Workers' Compensation Commission Appeal No. 92314, decided August 28, 1992; Texas Workers' Compensation Commission Appeal No. 91050, decided November 27, 1991. The claimant's testimony and the statement from his

doctor were evidence from which the hearing officer could infer that there was a causal relationship between the injury and the employment. Even though the evidence, in the eyes of a reviewing level body, might give rise to equally reasonable inferences different from those viewed most reasonable by a hearing officer, this is not a sufficient basis to reverse. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied).

Regarding the issue of timely filing of a claim for workers' compensation benefits, the official computer entry records of the Commission, which were accepted and admitted by the hearing officer, sufficiently establish that the claim was timely filed. Although the actual form that was filed, Form TWCC-41, was not in evidence, the official computer records are sufficient to establish that a claim was filed meeting the statutory requirements. While we do not find that any corrective action is necessary concerning the carrier's objection to the receipt of the official computer record as opposed to the actual form, it is certainly preferable to introduce the completed form where at all possible.

For the reasons set forth above, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge