APPEAL NO. 980234
FILED MARCH 13, 1998

This appeal is brought 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 December 18, 1997, with (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease; that the date of injury is _____; that the claimant timely reported the injury to her employer; that the claimant had disability from April 2, 1997, to the date of the hearing; and that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under her group insurance policy. The appellant (carrier) requested review, urging that the evidence is not sufficient to support the conclusions of law that the claimant timely reported the claimed injury to her employer, that she sustained a compensable injury, and that she is not barred from pursuing workers' compensation benefits because of an election of remedies and requesting that the decision of the hearing officer on those issues be reversed. The claimant responded, stating that the evidence is sufficient to support the decision of the hearing officer.

DECISION

We affirm.

The claimant testified that she began working for the employer on September 10, 1996, as a plant technician; that she watered, trimmed, cleaned, and replaced plants; that she carried cans that held two or two and one-half gallons of water; that she developed pain in her right elbow; that the pain got worse; that she never had that pain before; that she saw Dr. M, her family doctor, on _____; and that he diagnosed tendinitis caused by repetitive movements on her job. She said that the next work day she spoke with Ms. M, a supervisor; that she was wearing a brace when she talked with Ms. M; that she told Ms. M that the doctor told her that the job was causing her problems and that the brace should help while she was pouring the water; that Ms. M asked if she could perform her job, and that she said that she could with the medication and the brace. The claimant said that her immediate supervisor, Ms. U, was not available that day, and that she told her immediate supervisor about her elbow a few days later when she was available. She testified that her family doctor referred her to Dr. T, a specialist, and that he diagnosed tendinitis, changed her medication, and prescribed physical therapy. The claimant stated that on April 1, 1997, she began working fewer hours per week and stopped working on July 15, 1997, on the advice of her doctor. Medical records are consistent with the claimant's testimony.

The claimant testified that she used her husband's insurance when she went to the doctor; that she paid a $10.00 copayment each time she went to the doctor; that at that time she did not know that workers' compensation would pay for her doctor's visits;

that her sister told her about workers' compensation and the need to have a claim number; that she checked and found out that she did not have a workers' compensation number; that she talked with Ms. C, the manager; and that after workers' compensation forms had been filed, she received a letter from her husband's insurance company telling her that she had a workers' compensation claim.

Ms. M testified that she was the service manager for the employer in November 1996; that reporting injuries was brought up at meetings monthly; that the claimant should have known to report injuries to her or to Ms. C; that she knew that the claimant's elbow was hurting before she went to the doctor; that she did not know that it was related to work; that after the claimant went to the doctor, she did not say that she had been hurt at work; and that in June 1997 she first learned that the claimant was claiming that she was injured at work. Ms. C testified that she probably was first aware of the claimant's problems in November 1996, that the claimant's hours had to be reduced, that she knew the claimant's work may be aggravating her condition, that she first learned the claimant claimed it was job related in June 1997, that they then filed the first report of injury, and that they would have filed the required reports earlier had they known the claimant was claiming an on-the-job injury.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. Most of the carrier's appeal is directed to the determination that the claimant timely reported the injury to her employer. The hearing officer considered the conflicting evidence and found the testimony of the claimant to be more credible than that of the witnesses called by the carrier. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's determination that the claimant timely reported the injury to her employer is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). The evidence is also sufficient to support the determinations of the hearing officer that the claimant sustained a compensable injury and is not barred from pursuing workers' compensation benefits because of an election of remedies. Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge