APPEAL NO. 990119

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 on November 30, 1998. She determined that the appellant (claimant) did not sustain an injury in the course and scope of her employment on _____; that on _____, the claimant informed her supervisor that she was returning to the doctor for pain in her elbow, but did not state that she injured herself at work; that the claimant knew as early _____ that she may have had a left elbow injury from overuse but did not give notice of a new work-related injury to the employer until July 1998; that the claimant did not have good cause for failing to notify the employer of the claimed injury within 60 days of _____; that the carrier first received written notice of the claimed injury in July 1998 and timely contested compensability on July 13, 1998; that because of the elbow injury the claimant was unable to obtain and retain employment at wages equivalent to the preinjury wage beginning on May 26, 1998 and ending on August 5, 1998; and that since the claimant did not sustain a compensable injury to her elbow, she did not have disability. The claimant appealed, pointed out evidence that she thinks shows that some of the determinations adverse to her are wrong and stated why she thinks the evidence established she sustained a compensable injury, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in her favor. The respondent (self-insured) replied, questioned the timeliness of the claimant's request for review, urged that the evidence is sufficient to support the determinations of the hearing officer, and requested that her decision be affirmed.

DECISION

We affirm.

We first address the self-insured's questioning of the timeliness of the claimant's appeal. When the Texas Workers' Compensation Commission mailed the decision of the hearing officer to the claimant on December 14, 1998, it used the claimant's correct post office box number, but it used the city and zip code of the self-insured rather than the city and zip code of the claimant. The hearing decision cover sheet contains the correct city and zip code for the claimant, but a notation dated December 31, 1998, on a copy of the letter with the claimant's incorrect address states that the field office did not have another address for the claimant. Another note states that the claimant's address was changed on January 20, 1999. In her request for review, the claimant states that she received the decision on January 12, 1999; that date of receipt is accepted; the claimant's appeal was postmarked January 15, 1998; and her appeal was timely filed.

The Decision and Order of the hearing officer contains a detailed statement of the evidence. The claimant testified that she worked as a custodian for the self-insured for eight years, that in 1997 she had bilateral carpal tunnel syndrome (CTS) as the result of her work, that she had surgery on both hands in 1997, that the numbness in her hands went away, and that she returned to work in August 1997 when school started. She said that in

_____ her left elbow started hurting and her left hand was numb; that she thought it was the CTS she had before; that she told Mr. V, her supervisor, that she was having problems with her left elbow and her left hand was getting numb and that she needed to go back to the doctor; that Mr. V did not ask her what was causing it; that the next day, _____, she went to Dr. M, who had performed the CTS surgery; that Dr. M told her he thought it was the ulnar nerve and she should go back to Dr. J for additional nerve tests; that the next day she told Mr. V that Dr. M thought it was the ulnar nerve but he was not sure; that she did not know what was causing the problem; and that she was told the problem was caused by overuse, but she did not know when she was told that. The claimant stated that she worked until May 26, 1998, when she was placed on light duty but did not work because she was told the self-insured did not have light duty work for her; that she had surgery on her left elbow on June 3, 1998; and that she returned to work for the employer on August 5, 1998.

An unsigned and undated Workers' Compensation Employee Report of Accident that was transmitted by facsimile on July 9, 1998, indicates that the claimant had pain and numbness in the left elbow and hand; that the date of injury was _____; that the claimant returned to work in _____; and that the claimant lost time from May 26, 1998, until now. In a Workers' Compensation Supervisor's Investigation of Accident Report dated July 10, 1998, Mr. V said that the claimant started having pain and numbness in the left hand and elbow, that her first report of that was in _____, and that she was not injured on the job. In a Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) dated July 10, 1998, the self-insured contested the compensability of the claimed injury stating that the ulnar nerve condition did not result from her employment, that she did not timely report the injury to the self-insured, and that she did not have good cause for not timely reporting the injury.

In a note dated _____, Dr. M states that the claimant complained of severe pain in the left arm, particularly in the elbow, and numbness and tingling in the fourth and fifth digits; that his impression was probable ulnar nerve entrapment at the elbow; that he explained to the claimant that ulnar nerve entrapment was not uncommon in someone who had a history of CTS; that it certainly could be related to her job from overuse; and that she would be treated conservatively. In April 1998 Dr. M had nerve conduction tests performed. On May 15, 1998, Dr. M stated that the studies suggested ulnar nerve entrapment at the elbow and that that type of entrapment was not uncommon in the type of work that she does. Dr. P reviewed the medical records of the claimant and, in a report dated October 21, 1998, stated that it was alleged the ulnar nerve entrapment resulted from overuse or repetitive trauma; that while the claimant is involved in fairly physical activity, she has the ability to perform various job tasks; that in his opinion those tasks do not necessarily place her at increased risk for developing ulnar nerve entrapment; and that that condition may result as an ordinary disease of life or from blunt trauma.

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. 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. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. 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 could 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 medical evidence on whether the ulnar nerve entrapment resulted from the claimant's work is conflicting. That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn the factual determinations of a hearing officer. Only were we to conclude, which we do not in this case, that the hearing officer's determinations that the claimant did not sustain an injury in the course and scope of her employment with a date of injury of _____; that she did not timely report the claimed injury to her employer and did not have good cause for failing to do so; and that the self-insured timely contested compensability of the claimed injury are so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support those determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Gary L. Kilgore
Appeals Judge