APPEAL NO. 990204

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 12, 1999. The issues at the CCH were date of injury and timely report of the injury. The hearing officer determined that the date of appellant's (claimant herein) injury was _____; that the claimant did not report an injury until May 29, 1998; and the respondent (self-insured herein) is relieved of liability because the claimant did not timely report her injury. The claimant argues that the evidence established that her date of injury was (alleged date of injury), and that she reported her injury on May 6, 1998, and on May 29, 1998. There is no response to the claimant's request for review from the self-insured in the appeal file.

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.

The claimant worked as a title clerk for the self-insured in its title office. There was evidence that the claimant began having wrist and hand pain in 1997. The claimant testified that she was treating with Dr. T for these problems in February 1998. Dr. T referred her to Dr. H for nerve conduction studies. The claimant saw Dr. H on _____. The claimant returned to Dr. T on May 6, 1998. Dr. T referred her to Dr. C, an orthopedic surgeon, who saw the claimant on (alleged date of injury).

The claimant testified that Dr. H told her on _____, that she had the symptoms of carpal tunnel syndrome (CTS) and that the type of work she did could be the cause of her problems. The claimant testified that Dr. C confirmed she had CTS and that it could be related to her employment. It was the claimant's position that only after seeing Dr. C did she become aware she had a work-related injury.

The claimant testified that she discussed her hand problems with her supervisor, Ms. C on May 6, 1998. The claimant testified that on May 29, 1998, she reported to Ms. C that she had CTS that was related to overuse. Ms. C testified that the claimant did not indicate to her that her CTS was related to her employment on May 29, 1998, but became aware that the claimant was alleging that her problems were work-related when Dr. C's office called on June 26, 1998, and asked about workers' compensation coverage for the claimant's impending CTS surgery.

The date of an occupational disease is the date the claimant knew or should have known that the claimed injury may be work related. Section 408.007. That date is generally a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94534, decided June 13, 1994. The hearing officer found the date of injury to be _____, the date of the claimant's visit with Dr. H. The claimant argues that the date of injury was (alleged date of injury), the date of her first visit with Dr. C. While there is some evidence in the testimony of the claimant to support the claimant's contention

of the later date of injury, there is also evidence, including testimony from the claimant, to support the hearing officer's determination that the date of injury was _____. We have held that a claimant does not necessarily need medical confirmation of a condition before he or she is found to "know or should have known" that an injury was work related. *See* Texas Workers' Compensation Commission Appeal No. 92559, decided December 3, 1992.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support the _____, date of injury determination.

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 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 hearing officer found as a matter of fact that the claimant did not report to the employer that her CTS was work related until May 29, 1998. While there was conflicting evidence concerning when the claimant reported an injury, applying the standard of review discussed above, we find sufficient evidence to support the hearing officer's finding.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge