

APPEAL NO. 990259

On January 21, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the CCH were: (1) whether the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; (2) what is the correct date of injury; and (3) whether the appellant (carrier) is relieved of liability under Section 409.002 because of claimant's failure to timely notify her employer under Section 409.001. The carrier requests reversal of the hearing officer's decision that: (1) claimant sustained a compensable injury on \_\_\_\_\_; (2) the correct date of injury is \_\_\_\_\_; and (3) claimant timely reported her injury to her employer and carrier is not relieved of liability under Section 409.002. Claimant requests affirmance.

DECISION

Affirmed.

Claimant worked as a machine operator for the employer since November 1995. On August 19, 1998, she was seen by Dr. B at the (medical center) for pain in her left hand that radiated to her left shoulder. Dr. B diagnosed claimant as having Quervain's tendinitis of the left wrist and noted that claimant could return to light-duty work with no use of her left hand. Another CCH was held on January 21, 1999, concerning claimant's claim of a left hand injury. Claimant said that she returned to work on light duty on August 19th or 20th and that she was assigned to an automatic machine that filled up a box with 300 parts every 20 minutes. She said that she previously worked on a manual machine. Claimant said that her job was to sort the bad parts from the good parts and box them. She said that she was using only her right hand to do her work; that that job involved repetitive movements; that about a week before \_\_\_\_\_, she noticed that her right wrist would hurt when she went home from work; that on \_\_\_\_\_, she felt numbness in her right hand while performing her job; that she reported to her supervisor, GS, that her right hand was hurting and that she could not perform her job; and that he sent her to the human resources department. She said that after she reported her right hand problems to human resources, they sent her to the medical center and that she was told by a doctor there that she had symptoms of "carpal tunnel, overuse of the hand." At one point claimant said she reported "it" to GS on September 18th, but the hearing officer could infer from the fact that claimant was seen at the medical center on September 9th for right hand complaints and from claimant's testimony that the employer sent her to the medical center after she reported her right hand injury, that claimant's injury report was made on \_\_\_\_\_ or (day after injury).

The Employer's First Report of Injury or Illness (TWCC-1) was offered into evidence by claimant without objection by carrier and that report notes that claimant reported an injury to her right arm on \_\_\_\_\_. In its appeal, carrier offers no other date of reporting for our consideration, but states that according to the claimant, she reported her injury to her right wrist to her employer about a week after the symptoms developed.

Dr. J, who is associated with the medical center, reported that he saw claimant on September 9, 1998, that the claimant was on light-duty work for an injury to her left arm, that claimant said she had pain and numbness in her right arm, and he diagnosed claimant as having "tendinitis wrist" and "possible carpal tunnel syndrome." Dr. J wrote that claimant could return to limited duty on September 9, 1998. A note from the medical center dated September 29, 1998, states claimant's injury as bilateral wrist tendinitis and elbow tendinitis and states that claimant is to be on light duty with limited use of both hands, that claimant should not perform any activity requiring repetitive movement, and that she needs to avoid machine-operator functions. That note also states that nerve conduction studies are pending. No such studies were in evidence. Claimant was seen by Dr. M, D.C., on October 8, 1998, and Dr. M diagnosed claimant as having "[c]arpal tunnel syndrome, due to trauma. R/O." Dr. M noted that claimant was a machine operator and that she began to experience pain due to repetitive movements of her upper extremities. Dr. M referred claimant to Dr. K for an EMG and nerve conduction studies but no report from Dr. K is in evidence. Claimant said that she is now doing light-duty housekeeping work for the employer.

The hearing officer found that claimant's job duties required repetitive movements of the upper extremities on a regular basis, that the date claimant knew or should have known that her injury may be work related was \_\_\_\_\_, that claimant reported a work-related injury to her supervisor on \_\_\_\_\_, and that claimant sustained an injury in the course and scope of her employment on \_\_\_\_\_. The hearing officer wrote in her decision that claimant presented sufficient evidence to support a finding that she did sustain an injury to her right upper extremity on \_\_\_\_\_, and reported that injury to the employer within 30 days of the day she knew or should have known that her injury may be work related. The hearing officer concluded that claimant sustained a compensable injury on \_\_\_\_\_, that the date of injury is \_\_\_\_\_, and that carrier is not relieved of liability under Section 409.002.

The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084. We conclude that the hearing officer's decision on the disputed issues is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge