

APPEAL NO. 990260

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 respondent (claimant) sustained a compensable injury on or about _____; (2) what is the correct date of injury; and (3) whether appellant (carrier) is relieved of liability under Section 409.002 because of claimant's failure to timely report her injury under Section 409.001. The carrier requests reversal of the hearing officer's decision that claimant sustained a compensable injury on or about _____; that the correct date of injury is _____; and that carrier is not relieved of liability under Section 409.002. No response was received from claimant.

DECISION

Affirmed.

Claimant began working for the employer as a press machine operator in November 1995. She said that a press machine fills up a box with 300 plastic parts, that the boxes weigh about 25 to 30 pounds, that there are at least eight machines, that she takes a box of parts and dumps it on a table, that she sorts the parts and boxes them up, that she picks up the boxes and puts them on a pallet, that she then moves to the next machine and does the same thing, and that she continuously rotates from one machine to the next sorting and boxing parts. She said that in February 1998 her left hand began hurting; that in May 1998 a box fell when she was picking it up; that she had left wrist pain in May 1998; that she had pain in her left wrist before the box fell; that months before August 1998, she told her supervisor, GS, that her left hand hurt; that GS told her to put her hand in cold water; that she did that and continued to work; that on August 17, 1998, she noticed a bump on her left hand; that on _____, she went to the employer's human resources department and reported that her left hand was hurting; that she went to the (medical center) and was told she had tendinitis from overuse of her hand; that Dr. M, D.C., is her current treating doctor; and that she has not had diagnostic tests because they have not been approved.

GS testified that he became claimant's supervisor in April 1998; that claimant missed worked on August 17, 1998, due to a reported migraine headache; that on _____ he gave claimant a verbal warning for absenteeism; that that warning was reduced to writing on August 19th (a copy of the warning is in evidence); that the day after he gave claimant the verbal warning, claimant showed him a medical report; that that was the first he knew about claimant being injured; and that he does not remember claimant reporting wrist problems prior to that time.

Claimant was seen by Dr. B at the medical center on August 19, 1998, and Dr. B reported that claimant reported having left hand pain due to repetitive movements of her hands. Dr. B diagnosed claimant as having Quervain's tendinitis of the left wrist and restricted her to light-duty work with no use of the left hand. Claimant returned to light-duty work and was seen by Dr. J at the medical center on September 9, 1998, for complaints of

right arm pain. Claimant's claim of a right arm injury was the subject of another CCH held on January 21, 1999. A report from the medical center dated September 29, 1998, states that claimant has bilateral wrist tendinitis and elbow tendinitis, that claimant cannot perform any activity that requires repetitive movements, and that claimant needs to avoid machine operator functions. In a report dated October 9, 1998, 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.

The hearing officer found that claimant's job duties required repetitive movements of her upper extremities; that claimant sustained an injury in the course and scope of her employment on or about _____; that claimant reported a work-related injury to GS, her supervisor, in May 1998; that that report was made within 30 days of the date she knew or should have known that the injury may be work related; that the claimant trivialized the extent and severity of her injury until _____, when she reported the injury to the employer's human resources department after realizing the seriousness of her work-related injury; and that the date claimant knew or should have known that her injury was work related was _____. The hearing officer states in her decision that claimant was credible in her testimony that her work involved repetitive movements of her upper extremities and that the medical evidence supports her position that she sustained a repetitive trauma injury. The hearing officer concluded that claimant sustained a compensable injury on or about _____; that the date of injury is _____; and that carrier is not relieved of liability under Section 409.001. Carrier contends that the date of injury was in January or February 1998; that claimant did not report the injury to the employer until _____; that claimant did not have good cause for failing to timely report the injury; and that claimant suffers from an ordinary disease of life.

The issues on whether claimant sustained a compensable injury, the date of injury, and timely reporting of the injury presented fact questions for the hearing officer to determine from the evidence presented. 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. If, as carrier contends, claimant did not report her injury to her employer until _____, there is evidence that claimant continued to work and did not recognize the seriousness of her injury until August 1998 and such can constitute good cause for not timely reporting an injury. The hearing officer's finding that claimant reported the injury to human resources after realizing the seriousness of her injury is a finding on good cause. An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses. Appeal No. 950084. 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 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.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge