

APPEAL NO. 990534

On February 17, 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 appellant (claimant) sustained a compensable injury, in the form of an occupational disease, on or about _____; (2) whether claimant has had disability; and (3) whether respondent (carrier) is relieved of liability under Section 409.002 because of claimant's failure to timely notify her employer under Section 409.001. Claimant requests reversal of the hearing officer's decision that: (1) claimant did not sustain a compensable injury, in the form of an occupational disease, on or about _____; (2) claimant did not have disability; and (3) 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 affirmance.

DECISION

Affirmed.

Claimant testified that she is 37 years of age; that she started working for the employer in August 1997; that her normal job was to fold and pack pants; that she packed about 3,000 pairs of pants a day; that on _____, and the day before _____, she used large scissors to cut belt loops for eight hours each day at work; that she is left-handed; that the first day she cut belt loops she had swelling in her left hand; that on _____ she had swelling and pain in her left hand when cutting belt loops; that on _____ she told CV, the employer's finishing coordinator, and NB, a floor supervisor, that cutting the belt loops was causing her to have pain in her left hand; that NB told her on _____ that since she was left-handed she could not continue to cut belt loops; that CV saw that her hand was swollen on _____ and told her to go home and put ice on her hand; that she went home on _____ and put ice on her hand; that she returned to work doing her normal job but was putting stickers on pants; that she did not cut belt loops after _____; and that _____ was the first time she had pain in her left wrist.

Claimant further testified that she reported her left hand pain to CV and NB on several occasions after _____; that the cause of the swelling in her left hand was the repetitive work cutting belt loops and other jobs such as putting stickers on pants; that when she returned to work her left hand continued to have swelling; that in April 1998 she went to IM, the employer's nurse, for swelling and pain in her hand and IM put cream and a bandage on her hand and suggested that she see a doctor; that she had a low back injury in 1991 while working for a prior employer; that between _____ and April 1998 she saw Dr. H for her 1991 back injury and told him about her hand complaints; that Dr. H told her that the tendons in her left hand were injured due to repetitive type work; and that Dr. H told her that she can only do light-duty work.

Claimant also testified that the employer did not have light-duty work for her; that she has been off work since July 16, 1998; that Dr. H told her she needs surgery on her

hand but that has not been done because carrier has not paid for her medical treatment for her hand; and that while working for the employer she had a second job working as a home health aide. Claimant, in a recorded statement taken on May 28, 1998, indicated that she worked as a home health aide prior to working for the employer and that around May 1998 she began working weekends as a home health aide.

CV testified that she was in charge of the belt-loop-cutting project, that an employee would work only one hour a day cutting belt loops because employees were rotated into that job for only one hour a day, and that, because of the rotation of employees, it was unlikely that claimant would have cut belt loops eight hours a day for two days. CV also testified that employees used large scissors to cut the belt loops, that claimant never complained to her about injuring her wrist cutting belt loops, that she did not see claimant's hand swollen, and that she did not send claimant home to put ice on her wrist. CV said that it was in April or May when she was first made aware that claimant was claiming a work-related injury.

NB testified that it was not true that claimant would have cut belt loops for eight hours a day for two days because employees were rotated into that job to work for just one hour and then would go back to their normal job for the rest of the day, that two hours was the maximum number of hours an employee would work in a day cutting belt loops, that claimant's normal operation was putting stickers on pants, that she did not see claimant's hand swollen, that had she seen claimant's hand swollen she would have sent her to the nurse, that she does not recall claimant telling her that she injured her wrist from cutting belt loops, and that claimant did comment to her that she was left-handed and for that reason could not cut the belt loops with the scissors.

Dr. H's reports of January, February, and May 1998, state a date of injury of (date of 1991 injury), and record complaints of back pain without mention of complaints of hand, wrist, or upper extremity pain or swelling. Dr. H wrote that on June 30, 1998, claimant called him concerning an on-the-job injury she had to her hands. Dr. H wrote on July 16, 1998, that claimant was working on _____, performing a belt loop operation when she developed the onset of hand pain and swelling, that she reported the injury to her supervisor, and that, since that time, she has been putting labels on pants and using a gun to apply stickers to pants. Dr. H diagnosed claimant as having early carpal tunnel syndrome (CTS) of the left hand and stated that claimant could continue to work light-duty work with no rapid repetitive movements or grasping with her left hand. On July 28, 1997, Dr. H wrote that claimant had been under his care since July 16, 1998, for discomfort that she developed in her left hand on _____, while performing repetitive activities on the job, that claimant has findings consistent with early CTS and over-use syndrome of the upper extremity, and that he believes that claimant's symptoms are related to her on-the-job activities. On August 24, 1998, Dr. H wrote that claimant was unable to work as of that date.

Dr. H referred claimant to Dr. C for an electromyogram (EMG) and Dr. C reported in the history section of his report dated August 31, 1998, that claimant's job required

repetitive use of her upper extremities and that she had pain in her left hand. Dr. C wrote that the EMG showed a left median nerve CTS. Dr. H wrote on September 8, 1998, that the claimant's symptoms are consistent with CTS on the left.

Claimant filled out a written injury report on May 14, 1998. The Employer's First Report of Injury or Illness (TWCC-1), dated May 28, 1998, states that claimant reported her left hand injury on May 13, 1998. IM's nurse's log for non-work related incidents reflects that on _____, while claimant was working in the sticker department, claimant complained to her about swollen hands. Claimant said that IM told her that she thought that was due to fluid retention.

Claimant had the burden to prove that she was injured in the course and scope of her employment, that she had disability, and that she gave timely notice of injury to her employer. There is no appeal of the hearing officer's finding that claimant knew or should have known that her injury may be related to her employment on _____, and claimant states in her appeal that that was the date of her injury. Claimant appeals the hearing officer's findings that she did not sustain an injury, in the form of an occupational disease, in the course and scope of her employment on _____, and that she did not report a work-related injury to her employer until May 13, 1998, which was more than 30 days after the date she knew or should have known her injury may be work related. Claimant also appeals the hearing officer's conclusions that claimant did not sustain a compensable injury, in the form of an occupational disease, on or about _____; that because claimant did not sustain a compensable injury, she did not have disability; and that carrier is relieved of liability under Section 409.002 because of claimant's failure to timely notify her employer under Section 409.001. Claimant contends that she was injured at work on _____, due to repetitive hand movements; that she timely reported her injury to her employer on _____; and that she has had disability. Claimant did not assert at the CCH or on appeal that she had good cause for not reporting her injury to her employer within 30 days of the date of injury.

There was conflicting evidence on the issues of injury and timely reporting of the injury. The 1989 Act makes the hearing officer the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier 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. While Dr. H's opinion tends to support claimant's claim, it has been held that the finder of fact is not bound by the testimony of a medical witness where the credibility of that testimony is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Ins. Co.; 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). We conclude that the hearing officer's decision that claimant did not sustain a compensable injury in the form of an occupational disease and that carrier is relieved of liability because of claimant's failure to timely report the injury to her employer is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709

S.W.2d 175 (Tex. 1986). The hearing officer did not err in deciding that claimant has not had disability because, without a compensable injury, claimant would not have disability as defined by Section 409.011(16).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge