APPEAL NO. 990694

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 3, 1999. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that she did not timely report her injury to her employer, without good cause for her failure to do so; that she did not timely file her claim with the Texas Workers' Compensation Commission (Commission), without good cause for her failure to do so; and that she did not have disability within the meaning of the 1989 Act. In her appeal, the claimant essentially argues that each of those determinations are against the great weight of the evidence. In its response, the respondent (carrier) urges affirmance. The parties resolved an issue as to the date of injury by stipulating that the date of the alleged occupational disease injury was _____.

DECISION

Affirmed.

The claimant testified that in February 1996, she began working as a waitress at a pharmacy. She stated that on a typical day she covered 10 tables and half of the lunch counter. She estimated that she served about 80 customers in her shift, which ran from 11:00 a.m. to 4:00 p.m., six days per week. The claimant asserts that she sustained an occupational disease injury, specifically carpal tunnel syndrome (CTS). She maintains that her CTS was caused by carrying the dishes and operating a can opener to open large cans of fruit. The claimant stated that she was required to open five to six large cans of fruit each day.

On _____, Dr. B conducted nerve conduction testing (NCV) on the claimant's wrists. In a report of the same date, Dr. B diagnosed bilateral CTS, right worse than left. The claimant testified that she reported her injury to Ms. W, her supervisor, after she received the results of her NCV testing, insisting that she told Ms. W that her CTS was caused by the activities she performed at work, carrying the trays and using the can opener. The claimant testified that she stopped working for the employer in August 1997 because of the problems she was having with her hands. She stated that she has not worked since that time because of her CTS. The claimant acknowledged that she did not file a claim with the Commission until September 8, 1998, explaining that she did not file a claim earlier because she thought the claim had been accepted in that she was not receiving bills for her medical treatment. However, the claimant also testified that she did not receive any medical treatment from June 1997 until August 1998 because her CTS claim was being disputed and she did not have the money to pay for the doctor. In a prior recorded statement, the claimant stated that she told Ms. W that she had CTS but that she did not tell Ms. W that it was work related. She explained that she did not tell Ms. W that her injury was work related because she did not think that Ms. W would do anything about it.

The carrier also introduced a recorded statement from Ms. W. Ms. W stated that the claimant never mentioned anything to her about having problems with her hands and Ms. W never noticed her having problems with her hands. Ms. W insisted that the claimant never reported a work-related hand injury to her.

The claimant has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before her. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. The testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain a compensable repetitive trauma, occupational disease injury. A review of the hearing officer's decision demonstrates that she simply was not persuaded that the claimant presented sufficient evidence to demonstrate the causal connection between her CTS and her work activities as a waitress. The hearing officer specifically noted that the claimant "did not testify credibly; her testimony was often vague and inconsistent" and that the claimant's "assertions regarding the causation of her [CTS] were not corroborated by any other credible evidence." The hearing officer was acting within her province as the fact finder in deciding to reject the claimant's testimony. Our review of the record does not reveal that the hearing officer's determination that the claimant did not sustain a repetitive trauma, occupational disease injury in the course and scope of her employment as a waitress is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co.,15 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to reverse that determination on appeal.

The hearing officer also determined that the claimant did not timely report her injury to her employer, stating that the "preponderance of the credible evidence established that she did not ever report a work-related CTS injury to Employer, and she did not establish good cause for failing to do so." As noted above, there was considerable conflict in the testimony and evidence on this issue. At the hearing, the claimant maintained that she told Ms. W that she had CTS and advised her that it was caused by her work activities. However, in her prior recorded statement, the claimant stated that she did not report a work-related CTS injury to her employer. In addition, Ms. W stated that the claimant did not ever report a work-related CTS injury to her. The hearing officer resolved those conflicts

and inconsistencies in favor of a determination that the claimant did not timely report her injury to her employer. As the trier of fact, the hearing officer was free to so find and nothing in our review of the record demonstrates that that determination is so contrary to the great weight of the evidence as to compel its reversal. Pool; Cain.

It is undisputed that the claimant did not file her claim with the Commission until September 8, 1998, beyond the one-year limit from the date of injury for filing a timely claim. The claimant asserted that she had good cause for not filing her claim earlier because she believed her injury had been accepted as she was not receiving medical bills. However, at another point in the hearing, the claimant testified that she did not receive medical treatment from June 1997 to August 1998 because the injury had been disputed and she did not have the money to pay for a doctor. The question of whether the claimant established good cause for her late filing of a claim was a question of fact for the hearing officer. She resolved the conflicts and inconsistencies in the claimant's testimony by finding that the claimant did not demonstrate good cause for failing to timely file her claim. That determination is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust; thus, we will not disturb it on appeal.

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm her determination that the claimant did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Alan C. Ernst
Appeals Judge