APPEAL NO. 991014

This appeal is brought 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 30, 1999. He determined the appellant (claimant) knew or should have known that her claimed occupational injury may have been related to her employment on _____; the date of the claimed injury is _____; that the claimant reported the claimed injury to the employer on October 15, 1998; that the respondent (carrier) is relieved of liability because of the claimant's failure timely to notify the employer of the claimed injury; that the claimant did not injure her wrist, arm, or shoulder in the course and scope of her employment; that she did not sustain a compensable injury; and that since she did not sustain a compensable injury, she did not have disability. The claimant appealed, pointed out evidence favorable to her position, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in her favor. The carrier responded, urged that the determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, and requested that the decision of the hearing officer be affirmed.

DECISION

We affirm.

The claimant testified that she worked at the employer for a temporary agency and as an employee of the employer starting on October 31, 1997; that her job was to obtain restitution on returned checks; and that eight hours a day she talked with debtors and made entries on a computer. She said that in _____ she started having a cramping sensation in her left arm, that she did not think it was severe, and that she did not think it was serious. The claimant stated that on October 14, 1998, she woke up with her whole left arm swollen and in pain; that she went to an emergency room (ER); that tests were run and she was told she had either carpal tunnel syndrome (CTS) or tendinitis; that she was given medication and referred to a hand specialist; that on October 20, 1998, she went to Dr. E, a chiropractor and hand specialist; that Dr. E used two or three machines to conduct tests, said that she had CTS, and told her it was because of the repetitive movements at work; and that she first knew her condition was work related when she was told it was work related in the ER. She testified that Dr. E told her she could not use her left hand at work; that she told Mr. C, her supervisor, that she could not use her left hand; and that Mr. C told her the employer did not have work for her if she could not type. The claimant denied doing anything outside of her work that could have caused her left arm condition.

Dr. E testified that he treated the claimant for left CTS and tenosynovitis; that the claimant told him she typed eight hours a day; that he did not perform an EMG or nerve conduction study, but that he performed other tests that revealed she had CTS; and that based on reasonable medical probability her injury was the result of her work activity. Medical records from Dr. E are consistent with his testimony.

Mr. C testified that he first learned the claimant was claiming a work-related injury when he received a call from the doctor's office on October 21, 1998; and that he told the claimant to let him know what her restrictions were and that the employer would accommodate those restrictions.

Medical records dated April 14, 1998, are confusing. The records indicate that the claimant fell on her left side, had multiple contusions, and that x-rays of the right femur and the right hip did not reveal fractures, dislocations, or soft tissue abnormalities.

The claimant was questioned on October 27, 1998, and the transcript contains "(inaudible)" several times in responses to questions concerning date of injury. The transcript indicates the claimant responded that she started having symptoms a couple of months ago. After a response with two inaudibles, the questioner stated, "[o]kay, a couple of months ago when it first started you thought it was because of typing?" The claimant responded, "[y]eah. I kind of figured it was because of the typing. I slowed down typing so that 's probably why it, uh. (Inaudible)." The claimant explained that she did not pay any attention to it, that it would go away, and that it would come back the next day or two. The claimant was asked "[w]hen was the first day that you knew that what was going on with your hand was caused by your work?" She answered:

> Actually Tuesday night. Tuesday night. When I woke up Tuesday morning on the _____, my hand was just paining me so bad. My first reaction was well maybe I slept on it. You know, how you sleep on your hands and you (sic) arm and stomach is numb in bed. So I was experiencing that (inaudible) after a while, a couple of hours, like no, this is too painful for that. So I kind of figured that that had something to do with the job cause like I said I be at my desk and, uh, have these sharp pains in my hand and I just grab it. But this time, by me grabbing it was not doing any better. It was like it was just getting worse. So I knew something, had to do with the job.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). A doctor's statement of the history of an injury as reported to him by the claimant is not competent evidence that any injury occurred, but is admissible to show the basis of the doctor's opinion as to the cause of the claimant's condition. Texas Workers' Compensation Commission Appeal No. 931189, decided February 2, 1994. A hearing officer may consider differences in what the doctor thought the history was and what other evidence indicates that the history is. Texas Workers' Compensation Commission Appeal No.

952044, decided January 10, 1996. An expert's deductions from facts are not binding on a fact finder even when not contradicted by an opposing expert. Texas Workers' Compensation Commission Appeal No. 961610, decided September 30, 1996. An appeals level body is not a fact finder, and it 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). That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn the factual determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Only were we to conclude, which we do not in this case, that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Alan C. Ernst
Appeals Judge