APPEAL NO. 991115

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 5, 1999. The issues at the CCH were injury, date of injury and timely report of injury. The hearing officer determined that the respondent (claimant herein) suffered a compensable injury, that the date of injury was _____, and that the claimant timely reported his injury. The appellant (carrier herein) files a request for review arguing that the case hinged on the credibility of the claimant and the claimant was proven not be credible. The carrier also points to evidence contrary to the claimant's version of events. Finally, the carrier complains that the hearing officer did not discuss all the evidence and erred in excluding two exhibits. The claimant responds that the decision of the hearing officer is supported by the evidence and the contrary evidence relied upon by the carrier was itself riddled with inconsistencies.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant testified that he sustained an injury in the nature of a repetitive trauma injury to his right shoulder while installing ceiling tiles on day 1, day 2, and day 3. The claimant testified that he first knew he was injured on _____, and reported his injury on that date to his supervisor. There is a statement in evidence from the claimant's supervisor stating that the claimant reported shoulder problems, but did report an injury on the job. The claimant testified that he was transferred to a lighter job and continued to work for the employer but that his condition became worse especially after he was transferred to heavier work. On August 17, 1998, the claimant sought medical attention. Much of the evidence in the hearing surrounded issues concerning the claimant's termination from employment. The claimant testified that he was terminated the day after he saw the doctor and presented the employer with work restrictions. The carrier contended that the reason for the claimant's termination was that he had been moonlighting. There was considerable conflicting evidence in regard to this moonlighting. There was medical evidence supporting the claimant's contention that he suffered an injury on the job.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of

fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

A finding of injury may be based upon the testimony of the claimant alone. Houston Independent School District v. Harrison, 744 S.W.2d 298,299 (Tex. App.-Houston [1st Dist.] 1987, no writ). In the present case the hearing officer found an injury and there was sufficient evidence to support that finding in the testimony of the claimant and the medical evidence, even though there was conflicting evidence.

The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). To be effective, notice of injury needs to inform the employer of the general nature of the injury and the fact it is job related (emphasis added). DeAnda v. Home Ins. Co., 618 S.W.2d 529, 533 (Tex. 1980). Thus, where the employer knew of a physical problem but was not informed it was job related, there was not notice of injury. Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied). Here the claimant testified he reported an injury on _____, which the hearing officer found was the date of injury. While there is conflicting medical evidence in the statement of the supervisor, it was the province of the hearing officer to resolve this conflict in the evidence. The hearing officer found as a matter of fact that the claimant did timely report his injury to the employer. This finding was supported by sufficient evidence.

Much of the carrier's appeal is premised upon its contention that the hearing officer should not have relied upon the testimony of the claimant who it contends was not credible. Judging the claimant's credibility was up to the hearing officer as the finder of fact and we find no basis to find the claimant not credible as a matter of law. Nor will we imply from the hearing officer's failure to discuss all of the evidence that he did not consider it. While a more detailed discussion of the evidence might well make a hearing officer's decision more understandable to the parties and make our own review easier, there is no requirement under the 1989 Act or the rules of the Texas Workers' Compensation Commission that a hearing officer discuss the evidence in his or her decision. As far as the carrier's evidentiary point is concerned, we find no error in the hearing officer's exclusion, on the basis of untimely exchange, of the two unsigned witness statements that were not exchanged until the day of the CCH.

The decision and order or the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge