

APPEAL NO. 991188

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 13, 1999. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on _____, and whether the appellant (carrier) was relieved of liability for failure of claimant to give timely notice of injury to the employer. The hearing officer determined that the claimant sustained a compensable injury and that the claimant timely reported a work-related injury on July 20, 1998. The carrier appeals urging that the findings of the hearing officer were not supported by the evidence and that she was remiss in her determination that the claimant sustained a compensable injury and that he gave timely notice of injury. The claimant responds that the decision is correct.

DECISION

Affirmed.

The claimant testified that on _____, he felt an electric shock-type sensation in his fingers and up his arm and shoulder when he lifted a part that he was honing on a vertical honing machine. He stated he told a couple of workers about his injury, went to an emergency room the next day and reported the injury to his supervisor, KM, the next day when he went to work. Emergency room records refer to pain and numbness in the left arm and list an impression of left arm myofascial pain. He was referred to his own doctor. He worked until July 2, 1998, and apparently went on a vacation that was scheduled, and did not return to work after that. His wife called the employer asking about workers' compensation for the claimant sometime prior to July 20th, and the claimant came in that day and reported that his hand had been hurting, that he had been to an emergency room, that he was still having difficulty with his hand and could not work. In evidence was an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) signed by the claimant and dated July 16, 1998, and received by the Texas Workers' Compensation Commission on July 16, 1998. The employer's supervisor of health and safety, Ms. K, testified that when she talked to claimant's wife and the claimant, they did not report that his injury was work related but that she nonetheless arranged for the claimant to go to a doctor referred by the company and acknowledged that on the form she put "work related?"

The claimant also produced two statements from witnesses who indicated that on the day he was injured the claimant told them about how he got hurt lifting a part. A recorded interview of KM was in evidence and indicated that the claimant's wife called him a couple of weeks after the incident and told KM that claimant was hurt on the job. KM also indicated that claimant worked about 75% of his time on smaller parts that would use a vertical honer. Subsequent medical records in evidence show possible cervical radiculopathy. An MRI showed degenerative disc disease at C4-T1 and suggestion of mild foramina narrowing on the right at C4-5, C5-6. The EMG showed left ulnar neuropathy distal and features consistent with cervical root involvement at C6-T1 levels.

The carrier called the plant manager, Mr. S, who testified that according to records of part numbers, work schedules, and knowledge of what machine could do the work on a particular part, that the claimant was not working on a vertical machine on June 27th as claimed but would have had to have been working on a horizontal machine because of the part size. The claimant continued to insist that he was injured when he lifted a part to the vertical machine.

From the conflicting evidence, the hearing officer found that the claimant sustained an injury on _____, and that he gave timely notice. Clearly, there is evidence which supports inferences different from those found most reasonable by the hearing officer. However, this is not a sufficient basis for an appellate level review body to discard the factual findings of the hearing officer and substitute its judgment for that of the fact finder. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994; Section 410.165(a). Only were we to conclude that the determinations of the hearing officer were 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. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). While the evidence from the plant records and testimony of Mr. S tend to significantly challenge the claimant's testimony that he was injured while using a vertical machine, it is not conclusive that the claimant did not use the vertical machine at all on the day in question. It is apparent that the hearing officer believed the claimant and gave preponderant weight to his testimony that he did injure himself while lifting a part in the vertical machine. Claimant's testimony could be believed over other evidence to the contrary. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Similarly, there was evidence to support the determination that the claimant gave timely notice at least by July 20, 1998, contrary to the employer's assertions that the injury was never directly related to the work when the claimant and his wife talked to the employer. In sum, we do not find a sufficient basis to disturb the fact findings of the hearing officer. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Dorian E. Ramirez
Appeals Judge