

APPEAL NO. 991254

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 24, 1999, a contested case hearing was held. With respect to the issues before her, the hearing officer determined that the date of injury for the compensable injury of the respondent (claimant) is Injury 2, and that claimant timely reported his injury. Appellant self-insured ("carrier" herein) appeals these determinations on sufficiency grounds. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends that the hearing officer erred in determining that the date of injury in this case was Injury 2. Carrier asserts that claimant knew or should have known that his injury was work related on Injury 1, and that, because he did not report his injury until Injury 2, he did not timely report his injury. Carrier contends that claimant admitted an earlier date of injury in his transcribed oral statement.

Generally, a claimant must report an occupational disease injury to his employer within 30 days of the date he knew or should have known that the injury may be work related. Section 408.007; Section 409.001. No particular form or manner of notice is required and notice is sufficient if it reasonably apprises the employer of the general nature of the injury and that it is claimed to be work related. DeAnda v. Home Insurance Co., 618 S.W.2d 529 (Tex. 1980). Whether proper notice has been given is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 941347, decided November 23, 1994.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that he is claiming both a wrist and an elbow injury. Claimant said he never had any problems with his wrists and that he was told he had wrist problems after EMG testing. Claimant said he had never had an elbow problem before Injury 2. He said he began to experience elbow pain for the first time on that day. He testified that he had experienced numbness and tingling in his fingers off and on from using motors and tools at work, but he did not think anything of it. He said he did not "relate" the numbness to anything. In his transcribed statement, claimant said on February 2, 1999, that his elbows had been bothering him for six months or one year. Claimant said he knew that most

people in his department had undergone surgery but that it was related to their wrists, and he had not had any wrist problems.

In his transcribed statement, claimant said he did not say anything to his supervisor about his elbows because he “did not figure that it would be that important to change . . . to a different job.” He said he thinks his job caused the elbow problem because most people in his department have had shoulder, elbow, and carpal tunnel surgeries. In an April 23, 1999, letter, Dr. GR stated that claimant has both a hand and an elbow condition, that his current problems are due to repetitive work, that claimant said he was “occasionally experiencing numbness in his hands for several months,” that claimant thought it was because of vibrating tools, and that claimant “says he did not know it was damaging his hands.” Dr. GR further said, “it was when he began having pain with the numbness in January 1999 that he went to the plant medical office for help.”

The evidence in this case conflicted regarding when claimant knew or should have known that his elbow and wrist problem may be work related. The hearing officer determined that claimant knew or should have known his condition may be work related on Injury 2, and that he reported his injury on that same date. The hearing officer heard claimant’s testimony and apparently found that his testimony was credible. The hearing officer could have determined that claimant experienced symptoms but did not believe he had an injury, as opposed to temporary symptoms, until Injury 2. The hearing officer decided what facts were established and chose to believe that, because claimant knew or should have known that his injury may be work related on Injury 2, and reported it that same date, he timely reported his injury. We will not substitute our judgment for hers because we conclude that her determinations are not against the great weight and preponderance of the evidence, and we decline to overturn them on appeal. Cain, *supra*.

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Robert W. Potts  
Appeals Judge