

APPEAL NO. 991691

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 July 16, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury (occupational disease), the date of such injury, whether she timely reported the injury, and whether she sustained disability. The hearing officer determined that the claimant sustained a repetitive trauma injury to her left hand and wrist from lifting heavy pans; that the date of injury was (alleged date of injury); that the injury was not timely reported, thus relieving the respondent (carrier) of liability; and there was no disability. The claimant appeals, disagreeing with some findings of fact and urging that the evidence shows that the date of injury should be nearer the end of _____, and that she timely reported the work-related injury on _____. Claimant also disagrees with several of the hearing officer's conclusions, specifically that the date of injury was (alleged date of injury), that the carrier is relieved of liability for untimely notice, and that there was no disability as the injury is not compensable. The carrier responds that there is sufficient evidence to support the decision of the hearing officer and that the decision should be affirmed.

DECISION

Affirmed.

Clearly, the burden of proof and credibility were the key factors in the findings, conclusions, and decision of the hearing officer. In this regard, the burden of proof was on the claimant to establish the issues of fact that are now on appeal, and it was for the hearing officer to make those determinations of fact based on the evidence presented. Texas Workers' Compensation Commission Appeal No. 970907, decided June 26, 1997; Texas Workers' Compensation Commission Appeal No. 94085, decided March 11, 1994. Regarding the date of injury, the date the claimant knew or should have known that the occupational disease may be related to the employment (Section 408.007), the hearing officer found that the date of injury was (alleged date of injury). The claimant's testimony on this issue was uncertain and imprecise and left the hearing officer with a judgment call based on the inconsistent evidence before him. At one point, the claimant testified she realized she had a work-related injury, carpal tunnel syndrome, to her left wrist sometime in the last part of _____. At another point, she indicated that the date would be between the 15th and 30th of September, and in answer to questions from the hearing officer about whether it would be closer to the 15th or the 30th, responded that "between the 15th and 30th is the closest I can tell you." When asked on redirect examination whether it was before or after September 19th, the claimant stated "as I said before, I wouldn't be telling the truth if I said but I do remember the last part of September." Based on this, the hearing officer determined the date of injury to be (alleged date of injury), and we certainly cannot conclude his determination was so against the great weight and

preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ).

The claimant asserted that she first reported her injury to a supervisor, AJ, on _____, and again a couple of days later, after she had gone to a doctor. AJ testified and stated that although she was aware of the claimant's common aches and pains and that the claimant had mentioned she was experiencing some pain in her hand or wrist, she denied that she was aware of, or that the claimant had reported to her, any work-related injury in October. AJ stated that the first she became aware of a claim of a work-related injury was in February 1999 when claimant's doctor's office called the employer. The hearing officer found from the testimony and other evidence that the claimant did not report a work-related injury on October 19th in such a way as to put AJ on notice of a work-related injury and that the first notice to the employer was on February 24, 1999, from the doctor's office. It is apparent that the hearing officer accorded greater weight to the testimony of AJ and concluded that notice of a work-related injury was not given until February. As the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given the evidence (Section 410.165(a)), the hearing officer was not required to accept the claimant's testimony at face value and could believe the evidence contrary thereto. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). We have reviewed the evidence of record and cannot conclude that the findings, conclusions, and decision of the hearing officer were so against the overwhelming weight of the evidence or that they were clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Inasmuch as we affirm the hearing officer's findings regarding the failure to give timely notice of a work-related injury, the conclusion of law that the carrier is relieved of liability for benefits under the 1989 Act and the disability determination are likewise affirmed. Section 409.002.

The decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge