

APPEAL NO. 991935

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 6, 1999. He (the hearing officer) determined that: (1) the appellant (claimant) did not sustain a compensable occupational disease injury; (2) that the date of injury was _____; (3) that claimant did not give timely notice of her claimed injury; and (4) that claimant did not have disability. Claimant appeals these determinations on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends that the hearing officer erred in determining that she did not sustain a compensable occupational disease carpal tunnel syndrome (CTS) injury. Many of claimant's assertions in this regard concern whether the hearing officer should have found certain evidence to be credible. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The 1989 Act defines "injury" as damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. Section 401.011(26). The definition of "injury" includes occupational diseases. An "occupational disease" is defined as "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body," but does not include "an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). To establish that he has an occupational disease, the claimant's evidence must show a causal connection between the employment and the disease. Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991. Whether the necessary causation exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 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 great weight and preponderance of the evidence as to be clearly wrong or manifestly 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 she sustained a compensable CTS injury working for the (employer). She said her work involved repetitive use of her hands, that she did not know her problems with her hands were work related at the time that she was terminated on May 22, 1998, that she was diagnosed with CTS on _____, and that, until she discussed it with her doctor at that time, she did not know that her CTS was work related. There was evidence that claimant's September 1996 nerve conduction studies showed signs of CTS when she was tested after a motor vehicle accident in which she injured her neck and her back. Claimant denied that she was told anything about having CTS at that time.

The hearing officer assigned whatever weight he deemed appropriate to the evidence before him and could have chosen to believe or disbelieve any part of the evidence before him. The hearing officer stated in the decision and order that he did not find that claimant was credible in her testimony regarding her work activities. The hearing officer determined that claimant's job did not involve repetitive activities and that her work did not cause her alleged injury. There was evidence from coworkers that claimant's work did not involve repetitive use of her hands. Having reviewed the record in this case, we do not find the hearing officer's decision to be so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. For this reason, we will not substitute our judgment for that of the hearing officer. Cain, supra. The fact that the evidence could have allowed different inferences under the state of the evidence does not provide a sufficient basis for reversing the hearing officer's decision.

Claimant contends the hearing officer erred in determining that she did not timely report her injury to her employer. She also contends that the hearing officer erred in determining that the date of injury is _____. Claimant contends that the date she knew or should have known that her CTS is work related is _____, the date she discussed her diagnosis with her doctor, and that she reported her injury and filed a claim shortly after that time. Generally, a claimant must report an occupational disease injury to his or her employer within 30 days of the date the employee knew or should have known of the condition and that it was work related. Section 409.001(a).

The hearing officer determined that claimant knew or should have known that her condition may be work related on _____, just before she left her employment, and that, because she did not report her alleged injury until after 30 days had passed, she did not timely report her alleged injury. The hearing officer determined that claimant did not have good cause for failing to report her alleged injury within 30 days of _____. The hearing officer judged the credibility of the evidence and we will not substitute our judgment for his. After a review of the evidence in the record, we conclude that his determinations are not against the great weight and preponderance of the evidence, and we decline to overturn them on appeal. Cain.

Claimant contends that employer and carrier had actual notice of her claimed injury in _____. However, even assuming that this contention is supported by the evidence,

there would still not be timely reporting of the injury, which had a date of injury of _____.

Claimant contends the hearing officer erred in determining that she did not have disability. However, because the hearing officer found there was no compensable injury, there can be no disability.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge