APPEAL NO. 991970

Following a contested case hearing held on August 10 and 12, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by concluding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that claimant did not have disability as a result of the claimed injury; that if claimant sustained a compensable injury, the date of injury, pursuant to Section 408.007, would have been _____, the date claimant knew or should have known the disease may be related to the employment; and that claimant did not report an injury to the employer on or before the 30th day after the injury and good cause does not exist for his failing to timely report the injury. Claimant has requested our review, asserting, in essence, the insufficiency of the evidence to support these conclusions and the underlying findings of fact. The respondent (carrier) has filed a response which specifies the evidence it regards as sufficient to support the hearing officer's determinations.

DECISION

Affirmed.

In that the hearing officer's Decision and Order contains a detailed recitation of the evidence, our discussion of the evidence will be limited to that necessary to explain our decision. Claimant testified that prior to the employer's termination of his employment on March 23, 1999, for cause, he had worked for the employer as a machinist for approximately 11 years; that in November 1996 he sustained an injury to his neck and right shoulder; that he returned to work with certain restrictions including lifting restrictions and restrictions against "continuous bending of [his] neck"; and that his treating doctor, Dr. W, had approved his returning to work operating computerized lathe machines even though such work involved lifting pieces of steel of varying weights. He further stated that on February 8 and 9, 1999, he was instructed by the lead machinist, Mr. U, to stop operating the computerized lathe machines and work in the deburring area, grinding and filing the edges of newly-machined steel parts. Claimant said he protested that such work was outside the restrictions imposed by Dr. W, and that Mr. U told him to take the matter up with the supervisor, Mr. F. Claimant acknowledged doing deburring work for about one-half day on February 8th and nearly the entire shift on February 9th. Claimant said that this work required him to hold the parts in his left hand and use grinding and filing tools with his right hand to cut off the edges. He maintained that the left hand gripping and continuous neck bending involved in the deburring work injured his left hand, wrist, elbow, and shoulder, resulting in carpal tunnel syndrome and tendinitis. Claimant further testified that on February 16 or 17, 1999, Mr. U again told him to work in the deburring area and that he told Mr. U that he did not want to return to the deburring area because of his hand pain and he was going to see Dr. W about it. He indicated that he suspected since February 8, 1999, the deburring work was causing his left upper extremity symptoms. He also denied the

accuracy of the July 6, 1997, report of Dr. S, the July 10, 1997, report of Dr. P, and the January 14, 1999, report of Dr. E insofar as these reports referred to complaints of left-sided neck and left upper extremity symptoms and to treatment of those areas.

Claimant further testified that he saw Dr. W on February 25, 1999, and they discussed the possibility of a new injury; that an MRI ordered by Dr. W was performed on March 16, 1999; that on March 18, 1999, Dr. W's's nurse told claimant the results of the MRI, namely, that it showed that his neck was better; and that it was then that he knew he sustained a new injury doing the deburring work on February 8 and 9, 1999, and not a flare-up of his prior injury, because he realized it was not his neck that caused his left upper extremity pain. Claimant also said that Dr. W wrote a communication on April 19, 1999, taking him off work effective March 24, 1999, the day following the termination of his employment. He acknowledged having secretly tape recorded the March 23, 1999, meeting during which he was advised of the termination of his employment and said he reported the new injury to the employer at that meeting. Asked why he reported the injury at that meeting, claimant responded that it was his last chance to report the injury. He said he did not report the new injury after being advised of the MRI results on March 18, 1999, because he wanted to wait for the second opinion of Dr. C, whom he was scheduled to see on March 24, 1999, and he conceded not having reported the claimed new injury before the March 23rd meeting with the employer. Claimant acknowledged that his Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), filed on April 3, 1999, stated the date of his injury as _____. During the rigorous cross-examination, claimant several times expressed his confusion over dates.

Mr. U testified that all the employer's machinists perform some jobs other than operating the lathe machines; that all have to do some deburring at one time or another; and that some dislike deburring more than others. He said that deburring parts does involve the use of the hands but does not require repetitive motions with the hands. Mr. U also said that when claimant told him on February 17, 1999, that he could not do the deburring work, he told claimant to "just pick and choose" among the parts to select the parts he felt he could debur. Mr. U further stated that claimant's employment was terminated on March 23, 1999, for reasons of insubordination. Specifically, Mr. U said that claimant had been deleting some specific instructions for deburring on programs for the computerized lathes after having been told on several occasions not to do so.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). As an appellate reviewing tribunal, the Appeals Panel does not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge