APPEAL NO. 000040

This appeal is brought 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 December 6, 1999. The hearing officer determined that the appellant (claimant) did not injure her hands in the course and scope of her employment on _____; that she first notified the respondent (self-insured) of the claimed injury on July 17, 1998; that the self-insured did not know of the claimed injury before July 17, 1998; that the claimant did not have good cause for not notifying the self-insured of the claimed injury until July 17, 1998; that the claimant did not sustain a compensable injury; and that since she did not sustain a compensable injury, she did not have disability. The claimant appealed; contended that her 30 days to report the injury started on July 13, 1998, when she knew she had a fracture and suspected that it resulted from the _____, incident; argued, in the alternative, that she had good cause for not reporting the injury until July 17, 1998; urged that the determination that she did not injure her hands in the course and scope of her employment on _____, and did not have disability are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that she sustained a compensable injury on _____, and that she had disability beginning on July 20, 1998, and continuing through the date of the CCH. A response from the self-insured has not been received.

DECISION

We affirm.

The claimant testified she had an automobile accident; that she went to a hospital because of her heart in October 1997; and that she returned to work on April 1, 1998. She stated that on _____, she was working in a stock room hanging pants; that a cross bar and other items fell; that she put her hands on top of her head to protect it; that a box of socks hit her hands; that the other items missed her; that she had a headache, but did not know if she was injured; that she told Ms. M that she had an incident in the stock room; and that she showed Ms. M the things that fell on the floor. She said that about three weeks later she noticed something wrong with her hand; that she thought it had to do with the accident; that her heart condition causes swelling; that she went to a doctor and mentioned the incident and her heart; and that the doctor did not x-ray her hand, told her to take Ibruprofen, and did not tell her what was wrong with her hand. The claimant stated that she went to Dr. O, a chiropractor, on May 7, 1998; that Dr. O sent her to Dr. B; that Dr. B had x-rays taken; that she knew the injury was work related when Dr. B showed her the x-rays; that she was released to return to work at light duty; that she could not work because of the pain; and that another doctor told her she needed surgery.

Ms. M testified that she was the claimant's supervisor on _____; that she did not recall the claimant working in the stock room on that day; that on that day the claimant did

not say she had been injured; that in July 1998 the claimant called and asked if she, Ms. M, had filed an accident report; that she said she had not; that the claimant asked her to write a report; that she told the claimant she did not see an accident and would have to talk with people to see what had happened; that she spoke with Ms. DB, the director of personnel at the time; that she, Ms. M, did not complete a report; and that Ms. DB may have completed a report. Ms. M said that the claimant did not have a problem doing her work between _____, and the date in July 1998 when she called about the accident report and that the claimant did not bring a light-duty release slip to her.

Ms. DB testified that she was the personnel manager at the time; that on July 17, 1998, Ms. M told her about the claim; that the claimant came to her office and told her what had happened; that she did not investigate; that she filed a report; that she did not recall the claimant bringing a light-duty release slip to her; and that if a light-duty release slip had been brought to her, the light-duty requirement would have been accommodated. Ms. DB said she is now in charge of merchandise and there are 12 pairs of socks in a box.

Reports from Dr. O indicate that the claimant's first visit was on May 7, 1998, but a medical record with that date is not in evidence. A report of x-rays of the right wrist dated July 13, 1998, states that they show a well corticated bony chip near the medial aspect of the proximal end of the thumb; that it may be an old chip fracture; that mild degenerative arthritic changes were also present around the first carpometacarpal joint; that the findings were suggestive of old traumatic changes with mild degenerative arthritic changes; and in view of the claimant's acute pain, a recent fracture cannot be ruled out. In a report dated July 16, 1998, Dr. B said that the claimant reportedly fell on a slippery floor on April 8, 1998; that she noted discomfort in both hands after catching her fall on the firm floor; that she entered a cleaning room where objects fell toward her head; that she stopped the objects with both hands; and that her discomfort increased. Dr. B said that x-rays of the right hand and wrist confirm what appears to be a small avulsion fracture ununited involving the ulnar aspect base of the right thumb at the CMC joint with minimal displacement. In a letter dated September 16, 1998, Dr. O said that her diagnosis was right fracture of the carpal bone and left hand contusion and that the treatment was spinal manipulation. In a report dated December 1, 1998, Dr. O stated that her diagnosis was right wrist fracture and left hand edema and sprain/strain. In a letter dated March 5, 1999, (Dr. V) said that x-rays showed a chip fracture at the base of the right thumb and recommended open reduction of the fracture.

Section 409.001(a) provides that a claimant shall notify the employer of an injury not later than the 30th day after the date on which the injury occurs or, if the injury is an occupational disease, the date the employee knew or should have known that the injury may be related to the employment. The claimant argues that the date she knew or should have known that the injury may be related to employment is the date that started the 30-day period for reporting her claimed injury. We do not agree. However, such information may result in a determination that the claimant had good cause for not reporting the claimed injury until it was reported. The hearing officer determined that good cause for not timely reporting the injury did not exist until it was reported on July 17, 1998.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only were we to conclude, which we do not in this case, that the hearing officer's determinations that the claimant was not injured in the course and scope of her employment on _____, and that she did not report her claimed injury until July 17, 1998, are 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. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). The hearing officer did not abuse his discretion in determining that good cause for not timely reporting the claimed injury did not exist until it was reported on July 17, 1998. We affirm those determinations and the determination that the claimant did not sustain a compensable injury.

Disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id*. Since we have found the evidence to be sufficient to support the determination that the claimant did not sustain a compensable injury, the claimant cannot have disability.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Dorian E. Ramirez
Appeals Judge