APPEAL NO. 000087

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 was held on December 10, 1999. The hearing officer determined that the date of injury of the claimed injury is _____; that the appellant (claimant) timely reported the claimed injury to his employer on that day; and that the respondent (carrier) is not relieved of liability under the provisions of Section 409.002 for the claimant's not timely reporting the claimed injury. Those determinations have not been appealed and have become final under the provisions of Section 410.169. The hearing officer also determined that the claimant did not suffer an occupational disease with a date of injury of _____, in the course and scope of his employment; that the claimant's inability to work at his preinjury wage is a result of the his arthritis and not a compensable injury; that since the claimant did not sustain a compensable injury, he did not have disability. The claimant appealed, stated that he disagreed with three findings of fact and two conclusions of law, and urged that the evidence is sufficient to establish that he sustained a repetitive trauma injury in the course and scope of his employment and had disability. The carrier replied, urged that the evidence is sufficient to support the appealed findings of fact and conclusions of law, and requested that the decision of the hearing officer be affirmed.

DECISION

We affirm.

The claimant testified that he worked for the employer for about 14 years rebuilding valves; that the valves ranged from very small to very large; that at first he would take valves apart, clean parts, and reassemble the valves; that chemicals were used to clean the parts; that during the last time he worked for the employer, he mainly reassembled valves; that for a while he used an impact wrench; that later he was required to use a torque wrench to assemble valves; that his hands became swollen and his finger became numb; and that he advised his supervisor of that on _____. He said that he continued to work as long as he could, that he went to Dr. G in November 1995; that he told Dr. G what he did at work and that he used a lot of chemicals; that at first Dr. G thought that the problem was caused by chemicals; and that later Dr. G said that the problems were caused by arthritis and were related to his work. The claimant's supervisor described the work that the claimant had done while working for the employer. Two of the claimant's daughters testified about meetings that they attended with the claimant and others. One of them said that Dr. G told them that the claimant's condition was work related, but that at his age they would have a difficult time proving it.

A medical report from Dr. G dated November 27, 1995, states that the claimant, who was 61 years old, had problems flexing his fingers on the right hand; that he had some degenerative arthritic changes and very stiff hands; that the claimant was exposed to chemicals at work; that there is a question as to whether chemicals were involved; and that

the diagnosis was inflammatory reaction to the right hand metacarpophalangeal joints, etiology unknown. On December 18, 1995, Dr. G recorded that chemicals were not the cause of the problems. The claimant had a bone scan performed. In a report dated January 11, 1996, Dr. G said that the bone scan films revealed degenerative osteoarthritis and that the claimant was not able to work. On February 20, 1996, Dr. G described the claimant's condition and said that it was related to the repeated trauma and repeated effort at work. Surgery was performed on February 22, 1996. The claimant underwent therapy, but still had problems. In a letter dated March 3, 1999, Dr. P, a hand surgeon, stated that the claimant developed traumatic osteoarthritis of the right hand from repetitive work. On September 27, 1999, Dr. P wrote that the claimant's condition resulted from repetitive trauma requiring heavy use of both hands and that his type of injury would be consistent with the type of work described by the claimant.

The hearing officer made findings of fact that the claimant bought a welding truck, worked on welding with his nephew, and worked on at least one job after leaving work with the employer. In his appeal, the claimant said that he disagreed with those findings of fact. In a report dated April 17, 1997, Dr. G said that the claimant was able to work a little on his own in welding; that the claimant had his own welding truck which his nephew had at the time; that they did work in the afternoon, at night, and on weekends; and that the claimant was unable to pass a physical examination that would permit him to work for a company.

The burden is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the 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). An expert witness's deductions from facts are not binding on the hearing officer even when they are not contradicted by another expert witness. Texas Workers' Compensation Commission Appeal No. 961610, decided September 30, 1996. 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 would 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 appealed determinations of the hearing officer concerning injury in the course and scope of employment 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, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support those determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

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:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge