APPEAL NO. 000307

Following a contested case hearing held on January 12, 2000, 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 determining that the date of injury for the respondent's (claimant) compensable occupational disease injury is _____; that claimant sustained a compensable injury; that claimant timely reported the injury; and that he has had disability since July 13, 1999. The appellant (carrier) has requested our review of the injury, date of injury, and timely notice determinations for evidentiary sufficiency, asserting that a reasonable person in claimant's circumstances would have known between (date) and (date), when he learned he had not had a heart attack, that his disease may be related to his employment and, therefore, that his reporting of the injury on July 12, 1999, was untimely. Claimant responds, urging the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed.

At the outset of the hearing, the parties stipulated that the date of claimant's injury is on or after (date); that claimant reported the injury to the employer on July 12, 1999; and that if the injury is compensable, disability began on July 13, 1999. The hearing officer then excused the representative of another insurance carrier who had provided coverage for the employer to (date). Not appealed is the finding that "[t]he repetitively traumatic activities which Claimant performed within the course and scope of his employment with Employer caused him to sustain damage or harm to the physical structure of his body.

Claimant testified that he has worked as a roofer for approximately 28 years; that on _____, he had pain on the right side of his chest and in his right arm at work and that his wife took him to a hospital; that he was advised at the hospital, after undergoing an EKG, that he had not had a heart attack but that he may have a "pinched nerve"; and that he should follow up with his doctor. He said he saw Dr. W who was following his high blood pressure; and that she obtained x-rays and told him he had arthritis. A June 2, 1999, x-ray report from Dr. W states the impression as moderate degenerative spondyloarthritic changes of the cervical spine with narrowing of the disc space at C6-7 and the presence of osteophytes.

Claimant further testified that he is right-hand dominant; that he uses a torch and other roofing tools at work on roofs daily; that, apparently beginning in May 1999, he would feel some pain and tingling going down his right arm into his fingers, intermittently, both at work and at home when watching TV, and that it would resolve when he changed positions; that he commonly worked in pain, mostly in his back and sides, and the pain resolved; that neither the hospital personnel on _____, nor Dr. W when he followed up with her, advised him that his pinched nerve and right arm symptoms were related to his work; and that he had no specific incident of injury at work and did not know about the work-

relatedness of his condition until Dr. H advised him of it on July 12, 1999. Claimant further stated that Dr. H took him off work on July 12, 1999, and claimant advised the employer the next day of the injury. Claimant, whose wife described him as a "work addict," indicated that he would like to return to work and feels he could work through the pain but that the doctors have kept him off work and have told him he could end up paralyzed if he attempts to resume working.

Dr. W's records contain a _____, record reflecting that claimant complained of pain in the right arm but had no shortness of breath; that her assessment was right shoulder pain; and that her plan included referral of claimant for nerve conduction velocity studies of the right upper extremity. In a January 11, 2000, letter to the carrier's representative, Dr. W wrote that an attached office note "should have been dated 6/22/99"; that claimant's symptoms did not respond to conservative treatment; that claimant's x-rays suggested a neuropathy originating from cervical disc disease; that "[t]his was the first indication of a possible work related injury"; and that she recommended a neurosurgical evaluation.

Dr. H's records reflect that he commenced providing chiropractic care to claimant on July 7, 1999. Dr. H's office note of July 12, 1999, states that claimant is to abstain from work for one week because his work is a constant source of aggravation and will interfere with his progress, and that this will be taken one week at a time. A July 26, 1999, MRI report for Dr. H states the impression as degenerative spur plus disc formation at C6-7 with encroachment on the dural sac and left exit foramen. In a letter of September 21, 1999, Dr. H explained in substantial detail how the physical stresses of claimant's tasks in working as a roofer injured his neck and prevent him from being able to work in his usual position.

In his letter of November 9, 1999, to the carrier, Dr. T, who reviewed claimant's medical records for the carrier, stated that a clinic note of April 28, 1999, reflects that claimant was referred for nerve conduction studies of his right arm and hand and then referred to a neurosurgeon and that this should have put a reasonable person on notice that his problem was related to his neck and/or nerves in that body area and not necessarily his heart. Dr. T also stated that it is possible that claimant's lifelong activities of heavy labor "could have had a large portion of causation for his degenerative disc problems."

The date of injury for an occupational disease injury is the date on which the employee knew or should have known that the disease may be related to the employment. Section 408.007. The carrier contended at the hearing that claimant should have known of the work-relatedness of his cervical injury on _____, when a heart attack was ruled out or by sometime in May 1999 at the latest; that because the injury date was _____, or sometime in May 1999, claimant's reporting of the injury on July 12, 1999, was not within 30 days of the injury date, as required by Section 409.001, and was thus untimely; that because claimant failed to timely report his injury, his injury is not compensable; and that because he does not have a compensable injury, he cannot have disability.

In addition to the legal conclusions that claimant sustained a compensable injury, that the injury date is _____, and that claimant timely reported his compensable injury of _____, the carrier challenges findings that claimant first knew or should have known of the possible causal relationship between his employment and his repetitive trauma injury on _____, and that claimant reported his injury on July 12, 1999, within 30 days of _____.

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 (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel, an appellate reviewing tribunal, will 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:

_____
Gary L. Kilgore
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge