APPEAL NO. 000453

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 February 2, 2000. With regard to the issues before him, the hearing officer determined that the respondent (claimant) sustained an injury in the course and scope of his employment in the form of an occupational disease (bilateral carpal tunnel syndrome (CTS)), that the date of injury was _____, that claimant timely reported his injury to the employer and that claimant timely filed his claim for compensation.

Appellant (carrier) appeals the adverse findings, contending that most of claimant's work was right-handed so he could not have left-handed CTS; that claimant has thoracic outlet syndrome, not CTS; that claimant actually incurred his injury in _____ and the date of injury should be _____; and that with a 1997 date of injury, claimant did not timely report his injury or file his claim in 1999. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. Claimant responds, urging affirmance.

DECISION

Affirmed.

Claimant was apparently employed as an "electrical technician" by the employer and had been so employed some 10 or 12 years. Claimant testified, and demonstrated, in some detail regarding his duties stripping, splicing, cutting cables and using various gripping tools, including use of a large stripping tool (the "big tool"). Claimant testified that he worked considerable overtime, especially in 1997. How much overtime and the extent of claimant's duties doing stripping and splicing is in dispute. Claimant's family doctor was Dr. R. It is undisputed that claimant saw Dr. R on _____, with complaints of neck pain and sleep loss. Dr. R's report and examination of that date "reveals a positive Tinel, positive Phalen, and no evidence of swelling. He does have pressure sensitivity bilaterally over the carpal canal." Dr. R goes on to note that electrical studies "reveal bilateral [CTS] of a mild to moderate level." Dr. R prescribed medication and wrist splints, and noted that "all medical treatment" would be exhausted before "other alternative treatments." Dr. R noted that he discussed claimant's condition with claimant and his wife, but exactly what was said is unclear and disputed. Claimant testified that he understood that he was only to return to see Dr. R if the medication "didn't work." Claimant testified that he paid for this visit and treatment on his own, that no injury was reported to the employer and that he missed no time from work. Claimant testified that after seeing Dr. R in December 1997, his duties changed, the medication helped and that he did not need any additional treatment until August 1999. Claimant's condition and symptoms between December 1997 and August 1999 are in dispute. A recorded statement claimant gave in September 1999 is inconsistent with parts of claimant's testimony and the medical documentation.

Claimant testified that his 1997 complaints had largely resolved by summer of 1999 when claimant began having numbness and "locking up" of his right hand, causing him to use his left hand, especially when using the big tool. Claimant testified that both hands then went numb and "began locking up" and his fingers began to swell. Claimant returned to Dr. R on _____, and in handwritten notes of that date, Dr. R noted difficulty gripping, dropping objects and "loss of grip." Dr. R recommended "EMG/NCT" testing. Claimant testified that his symptoms in 1999 were both different and more severe than his 1997 complaints. Claimant was seen in an occupational clinic on August 5, 1999, where a history was noted of "Rt. arm, shoulder & wrist pain x 3-4 months. It has gotten worse in the last few weeks . . . ." An assessment by a physician's assistant was probable thoracic outlet syndrome, "This does not appear to be [CTS]." Claimant reported a work-related injury to the employer on either August 2 or 6, 1999. Electrodiagnostic testing performed on September 2, 1999, showed moderate right CTS and mild to moderate left CTS. In a report dated September 3, 1999, Dr. R referred to his "initial consultation" on _____; stated that claimant "is continuing to have problems with [CTS]"; and that electrical studies "showed a continued [CTS]"; and recommended surgery. Although not in evidence, claimant apparently filed his Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) in December 1999.

In disputed findings of fact, the hearing officer determined:

FINDINGS OF FACT

2. Claimant sustained a carpal tunnel injury in _____, 1997, but that injury resolved after Claimant received treatment and his job duties were changed.

3. On _____, Claimant experienced increasing symptoms of bilateral arm and wrist pain, numbness, and "locking up" of his hands.

4. Claimant's bilateral arm and wrist pain, numbness, and "locking up" were symptoms of a bilateral repetitive trauma injury caused by Claimant's duties at work.

5. On _____, Claimant knew or should have known that he had a work related injury.

6. On August 6, 1999, Claimant reported a work related injury to his arms and wrists to his employer.

7. Claimant filed a claim for compensation for the injury to his arms and wrists within a year of the date he knew or should have known that he sustained a work related injury.

Carrier appeals those, and other, determinations, arguing 1) that claimant's duties would not cause bilateral CTS, that claimant has thoracic outlet syndrome rather than CTS, and that claimant was merely suffering from a continuation of his _____ injury; 2) that the date of injury should be _____; and 3) with a _____, date of injury, claimant's reporting of an injury in August 1999 and filing a claim in December 1999 was not timely. First, addressing the occupational disease issue, an occupational disease includes a repetitive trauma injury. Section 401.011(34). Section 401.011(36) defines a "repetitive trauma injury" as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." While carrier argues that claimant's duties could not result in bilateral CTS, and how much time claimant spent in repetitive duties versus other duties, such as driving a forklift, these were factual determinations for the hearing officer to resolve. The hearing officer heard claimant's explanation of his duties and was able to observe claimant's demonstration of the splitting, splicing, cutting, etc. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

However, basically, carrier's argument comes down to whether the date of injury, for this injury, was _____, or _____. Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. In this case, carrier argues that the date of injury was _____, and that claimant's current symptoms are merely a continuation of that injury. The hearing officer, however, found that the _____ CTS injury had resolved and claimant had sustained a new injury on _____. There was conflicting medical and testimonial evidence on this point. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer chose to believe that the _____ injury had resolved and that claimant had sustained a new injury and those findings are not so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. Cain, *supra.*

In that we are affirming the hearing officer's findings that claimant sustained a new injury on _____, claimant then also timely reported his injury on August 2 (or 6 as found by the hearing officer), 1999, and timely filed his TWCC-41 within one year of _____.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Elaine M. Chaney
Appeals Judge