APPEAL NO. 000673

This appeal arises 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 March 8, 2000. The issues at the CCH were whether the appellant (claimant herein) sustained a compensable injury on _____; whether the respondent (carrier herein) is relieved of liability under Section 409.002 because of the claimant=s failure to timely notify her employer of the injury under Section 409.001; and whether the claimant had disability resulting from the claimed injury. The hearing officer determined that the claimant did not sustain a compensable injury on _____; that the carrier is relieved of liability under Section 409.002 because of the claimant=s failure to timely notify her employer; and that the claimant did not have disability. The claimant appeals, requesting that we reverse the hearing officer=s decision and render a decision in her favor. The carrier responds, urging affirmance.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarized the evidence and we adopt her rendition of the evidence. We will only briefly touch on the evidence germane to the appeal. This includes the fact the claimant testified that she was a customer service representative who sat constantly during her eight-hour shift. The claimant also testified the chair she was using had defective back support and that as result she began experiencing back pain in mid-February 1999. The claimant testified that on a particular day she went to sit in the chair and its back gave way causing her to catch her back. The claimant testified that she notified her supervisor on or about _____, the date she asserts as her date of injury, that she needed a new chair because her back was hurting. The supervisor testified that she first heard the claimant was having back problems in April 1999 when the claimant requested a new chair. The claimant sought medical treatment on May 1, 1999, complaining of low back and neck pain. The claimant displayed some of the symptoms of meningitis and underwent a spinal tap. The claimant later went to see her family doctor who stated the etiology of her back pain and other symptoms were unknown. Another doctor attributed the claimant's symptoms to the spinal tap. The claimant later treated with a chiropractor who testified at the CCH and attributed the claimant's problems to use of a defective chair at work.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of 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, 702 (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, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

A finding of injury may be based upon the testimony of the claimant alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present case the hearing officer found no injury contrary to the testimony of the claimant which found some support in the medical evidence. Claimant had the burden to prove she was injured in the course and scope of her employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). To be effective, notice of injury needs to inform the employer of the general nature of the injury and the fact it is job related (emphasis added). DeAnda v. Home Ins. Co., 618 S.W.2d 529, 533 (Tex. 1980). Thus where the employer knew of a physical problem but was not informed it was job related, there was not notice of injury. Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied).

In the present case, the hearing officer found as a matter of fact that the claimant did not report a work-related injury to the employer until April 26, 1999. There was conflicting testimony as to when the claimant reported an injury and it was the province of the hearing officer to resolve the conflicts in the evidence. We do not find that the hearing officer's determination was contrary to the overwhelming evidence.

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition disability depends upon a compensable injury. *See* Section 401.011(16).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge