

APPEAL NO. 000887

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 13, 2000. The hearing officer determined that the respondent/cross-appellant (carrier herein) is not relieved of liability because the appellant/cross-respondent (claimant herein) timely notified the employer of his injury or alleged injury pursuant to Section 409.001; that the date of injury is \_\_\_\_\_; that the employer tendered a bona fide offer of employment on May 5, 1999; that the claimant sustained a compensable injury in the form of an occupational disease; and that the claimant had disability beginning \_\_\_\_\_, and continuing to the date of the CCH. The claimant appeals the hearing officer's determination that the employer made a bona fide offer of employment, contending that the offer did not contain the duties of the position being offered. The carrier responds that there was evidence supporting the fact that the claimant was aware of what the duties of the offered position were. The carrier appeals, asserting that the hearing officer's findings as to injury and the date of injury are contrary to the evidence. The carrier argues that the date of injury supported by the evidence made the claimant's report of injury untimely, relieving the carrier of liability.

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 summarizes the evidence in his decision and we adopt his rendition of the facts. We will only briefly touch on the facts most germane to the appeal. This includes testimony from the claimant that he sustained a repetitive trauma injury to his wrists and elbows which has been diagnosed as carpal tunnel syndrome (CTS) from performing repetitive motions while performing his duties as a chiropractor. The claimant testified concerning the repetitive nature of his work. His testimony in this regard was somewhat contradicted by the testimony of Dr. R, the employer's chief of staff. The claimant testified that in August 1998 he first noticed pain in his wrists and elbows and he first sought treatment for this on April 28, 1999, with Dr. Ri. Dr. R testified at the CCH that he diagnosed bilateral CTS which he related to the claimant's work. The diagnosis of CTS was confirmed by Dr. T, who also related it to the claimant's work. Dr. R testified at the CCH that, in his opinion, the claimant's work was not the cause of his CTS. It was undisputed that the claimant reported an injury to the employer on or about \_\_\_\_\_. On May 5, 1999, Dr. R sent the claimant a letter offering him a position within his restrictions as an exam doctor.

Section 401.011(26) states that an injury means damage or harm to the physical structure of the body and that term includes an occupational disease. Section 401.011 (34) defines occupational disease to include repetitive trauma injuries. 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." The hearing officer determined that the claimant's date of injury for his occupational

disease was \_\_\_\_\_, being the date he first knew that the date of his occupational disease or condition was related to his employment. The carrier asserts that the hearing officer's date-of-injury determination is against the great weight of the evidence, contending that as a chiropractor working for a clinic specializing in work-related injuries, the claimant should have known much sooner that his problem was related to work. The date of injury under Section 408.007 is a question of fact for the hearing officer to resolve. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Applying this standard, we find that the hearing officer's determination regarding the date of the injury was sufficiently supported by the evidence.

The hearing officer's resolution of the timely reporting issue was closely related to his resolution of the date of injury. 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. It was not disputed that the claimant reported his injury on \_\_\_\_\_. Given a date of injury of \_\_\_\_\_, his report of injury was clearly timely.

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. As stated previously, the 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). In the present case, the hearing officer resolved the conflicts in the evidence, including the medical evidence, in finding an injury. Applying our standard of review, we do not find this was incorrect as a matter of law.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.5(b) (Rule 129.5(b)), which was in effect at the time the offer in the present case was made,<sup>1</sup> states that a written offer of

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<sup>1</sup>Rule 129.6, a new rule concerning bona fide offer, went into effect on December 26, 1999.

employment shall be presumed to be a bona fide offer "if the offer clearly states the position offered, the duties of the position, that the employer is aware of and will abide by the physical limitations under which the employee or his treating physician have authorized the employee to return to work, the maximum physical requirements of the job, the wage, and the location of employment." The claimant argues that the offer in the present case did not meet the requirement of clearly stating the duties of the position. The hearing officer in his decision states that the claimant and his doctor were familiar with the term "exam doctor" and, thus, what duties were entailed in this position. While the claimant argues on appeal that this constituted conjecture on the part of the hearing officer, we find sufficient evidence in the record to support this in the testimony of the claimant and Dr. R, applying our standard of review.

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge