

APPEAL NO. 001034

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 April 5, 2000. With respect to the issues before her, the hearing officer determined that respondent (claimant) sustained a compensable occupational disease injury to her right elbow and index finger; that the date of injury is _____; that claimant had continuous good cause for her late report of the injury to the employer; and that claimant had disability from April 1, 1999, to July 21, 1999, and on August 18, 1999. In its appeal, the appellant (carrier) challenges each of those determinations as being against the great weight of the evidence. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer's decision contains a factual summary that will only be briefly summarized in this decision. It is undisputed that the claimant sustained a compensable injury in _____, right carpal tunnel syndrome, while working as a secretary for another employer, which was due to repetitive use of a computer. The claimant had two surgeries for that injury and returned to work in August 1997. The claimant testified that she worked continuously as a secretary/administrative assistant from August 1997 until March 22, 1999. She stated that she changed employers in May 1998 but that her duties were similar, in that each job required nearly continuous use of the keyboard and the mouse.

On March 22, 1999, the claimant sought medical treatment with Dr. B, who had performed her second surgery for the _____ injury, with complaints about her right index finger and her right elbow. Dr. B diagnosed right extensor tenosynovitis and extensor tendon tear; epicondylitis; and swan-neck deformity of the right index finger. In a March 30, 1999, "To Whom it May Concern" letter, Dr. B discusses the causal connection between the claimant's work activities of "using the computer and clicking a mouse repeatedly;" however, Dr. B continued to attribute the claimant's problems to her _____ compensable injury, as opposed to stating that she sustained a new compensable injury. The claimant denied that she and Dr. B discussed the work-related nature of her injury at the March 22, 1999, appointment, or that Dr. B attributed her problems to the _____ compensable injury. On April 6, 1999, Dr. B performed surgery on the claimant.

The claimant testified that it was not until July 1999, when she received a copy of Dr. B's March 30, 1999, letter that she first realized that her injury was work related. She further testified that on August 4, 1999, Dr. G, to whom she had been referred by Dr. B, confirmed that she had a work-related injury. She stated that she reported her injury to her employer on August 5, 1999. Ms. H, the employer's personnel manager, testified that she first learned that the claimant had problems with her arm in March 1999 and that the claimant did not report that she was claiming that her injury was work related until early August 1999.

Initially, we will consider the carrier's challenge to the hearing officer's determination that the claimant sustained a compensable occupational disease injury. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. Generally, injury and disability may be proven by the testimony of the claimant alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, the testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier contends that the claimant's "proof was wholly insufficient to establish causation, and did not even rise to the level of probative evidence." We find no merit in this assertion. The claimant testified as to the repetitive nature of the activities she performed on the computer, maintaining that she continuously used the keyboard and the mouse. In addition, Dr. B opined that there was a causal connection between the claimant's work activities and her injury. The hearing officer was acting within her province as the fact finder in deciding to credit that evidence and in determining that the claimant sustained a compensable occupational disease injury. Our review of the record does not demonstrate that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

The date of injury and timely notice issues also presented questions of fact for the hearing officer to resolve. The hearing officer determined that the date of injury under Section 408.007, the date the claimant knew or should have known that her condition might be work related, was _____, the date that she first sought medical treatment from Dr. B for her right index finger and right elbow complaints. The carrier contends that because Dr. B's records from that appointment reflect that the claimant complained of having had the problems for over a year, the date of injury was necessarily earlier than _____. We cannot agree that the reference to long-standing problems compels a reversal of the date-of-injury determination. The significance, or lack thereof, of that reference in the medical records was a matter left to the discretion of the hearing officer. Nothing in our review of the record reveals that the date-of-injury determination is so against the great weight of the evidence as to compel its reversal.

The hearing officer also determined that the claimant had good cause for not reporting her injury until August 5, 1999, more than 30 days after _____. The hearing officer determined that the claimant had good cause for her late reporting because Dr. B had attributed the claimant's problems to her _____ compensable injury rather than a new compensable injury. The hearing officer correctly notes that Dr. B's records from the March 22nd appointment and his March 30, 1999, letter, reflect that the causal connection between the claimant's injury and her work was discussed and that he attributed the problems to the prior compensable injury. As the carrier noted, the claimant denied that she and Dr. B had had such a discussion. Nonetheless, the hearing officer, as the sole judge of the evidence, was free to credit the evidence from Dr. B, even though it was inconsistent with the claimant's recollection of the nature of the conversation she had with Dr. B at the March 22, 1999, appointment. It was the hearing officer's responsibility to resolve the conflicts and inconsistencies in the evidence. The hearing officer's determination that the claimant had continuing good cause until she reported her injury to her employer is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, we will not disturb it. The fact that another fact finder may well have drawn different inferences from the evidence in the record, which would have supported a different result, does not provide a basis for us to reverse the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The carrier's challenge to the disability determination is premised upon the success of its arguments that the claimant did not sustain a compensable injury. Given our affirmance of the injury and timely notice determinations, we likewise affirm the hearing officer's disability determination.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Dorian E. Ramirez
Appeals Judge