APPEAL NO. 001043

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 April 19, 2000. The hearing officer determined that the respondent (claimant) had not sustained a compensable injury on _____; that she had no disability as a result of the contended injury; that she did not timely file a claim for compensation within one year of the date of injury and had no good cause for her failure to do so; and that she gave notice of a contended injury of _____, to her employer on June 20, 1994.

The claimant has appealed and spells out facts she believes support her injury. She contends that it is the fault of someone else that her injury was filed under the June 20, 1994, date. The claimant attached some documents to her appeal. The respondent (carrier) responded that the hearing officer's decision is supported by the evidence.

DECISION

We affirm.

The hearing officer has done a thorough summary of relevant evidence which we incorporate here. We note that we cannot consider additional evidence attached to appeals or responses, but are confined to reviewing the record developed before the hearing officer.

The claimant worked for (employer) and contended that she injured herself on _____, when she was reaching overhead at her workplace. She asserted that she injured her neck, shoulder, and experienced mental stress as a result of these injuries. The claimant said her mental stress arose because the employer kept transferring her from job to job and harassing her, after she returned to work on June 8, 1994, from a 1990 neck injury.

She had previously asserted these same injuries with respect to a compensable injury of June 20, 1994, and lost her contentions in a hearing decision issued November 13, 1998. The appeal of this decision was found to be untimely in Texas Workers' Compensation Commission Appeal No. 983009, decided February 4, 1999 (Unpublished). On October 12, 1999, the Texas Workers' Compensation Commission (Commission) filed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) completed by the claimant the month before, stating that she injured her neck and arm on _____.

The claimant said that the problem with dates was the fault of the employer's nurse, Ms. J, who had made her put all injuries under one date. She also contended that her previous attorney had been advised by the Commission that only one date could be used. The claimant said she had been claiming two injuries from the very first. She said that she had disability from the neck injury from _____, to the present. However, the claimant was at work on light duty through July 7, 1994, when she was terminated.

A supervisor for the employer, Mr. M, said that on June 21, 1994, the claimant had refused to perform a job that was within her restrictions and then said that she would be going to her doctor that day and he would take her off work. He said that the only time he recalled an injury being reported was for June 20, 1994, for a back injury. He denied he was approached by the claimant on June 24, as she indicated, to report a neck and shoulder injury.

In Texas Workers' Compensation Commission Appeal No. 962532, decided January 29, 1997, a decision was affirmed that had held that the claimant did not have disability from her June 20, 1994, injury for the period from July 7, 1994, through August 14, 1995.

Ms. J's note from the employer on June 20 does refer to the claimant's desire to file a claim for a _____, injury. However, essentially all pertinent documents (as noted by the hearing officer) bear the injury date of June 20, 1994, not _____.

OCCURRENCE OF AN INJURY ON _____

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). 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 of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ).

We have reviewed the record and cannot agree that the hearing officer's decision is against the great weight and preponderance of the evidence. As she did not find a compensable injury, there can be no disability as that is defined in Section 401.011(16).

UNTIMELY FILING OF CLAIM

The hearing officer's decision that the claimant did not file a claim within one year after _____, and did not have good cause for failing to do so, resolves the asserted claim for all intents and purposes, even if she had found an injury on _____. Section 409.004 states that the carrier is relieved of liability if the claim is not timely filed. The hearing officer could conclude from this record that even if the claimant's injury were reported on a single date by Ms. J, the claimant had plenty of opportunity in a number of proceedings at the Commission to clear up any discrepancy and assert a _____,

claim well before 1999, and thus did not have good cause for a late filing. The hearing officer did not err in finding that the claim was not timely.

MENTAL TRAUMA INJURY

The claimant asserted stress from being transferred to other jobs. She also indicated that the progress of the claim caused stress. As the hearing officer noted, there was no evidence, including medical evidence, specifically linking any event on _____, to the stress.

Mental trauma caused by a series of incidents, as opposed to one incident, is not compensable as a mental trauma injury under 408.006. *See* Transportation Insurance Company v. Maksyn, 580 S.W.2d 334 (Tex. 1979). Moreover, Section 408.006(b) states that emotional injuries arising from legitimate personnel actions, including transfers, are not compensable injuries. We cannot agree that the hearing officer erred by not finding compensable mental trauma or stress.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Dorian E. Ramirez
Appeals Judge