APPEAL NO. 001137

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 21, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____ (all dates are 1999 unless otherwise noted); that the claimant did not timely report an injury to the employer; that no good cause existed under the 1989 Act for the claimant's failure to timely notify the employer; and that the claimant has not had disability. The hearing officer also found that the correct date of injury is _____. The claimant appeals, asserting that the hearing officer failed to give sufficient "weight and credibility . . . to his credible testimony" and reiterated much of his testimony from the CCH. The claimant also contends that the hearing officer made "many mistakes regarding claimed body parts and issues" and that "there was no date of injury issue." The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as an after care counselor or coordinator by a private correctional service (employer) which apparently was running a juvenile "boot camp." Exactly what the claimant's duties were or, more specifically, how much of his duties involved writing reports and inputting data into a computer is at the heart of the dispute. The claimant testified in detail regarding his duties, including testifying at one time that he sometimes worked 80 hours a week and 16-hour days. Testimony from Mr. M, at one time the claimant's coworker and subsequently supervisor, differed on total hours worked, how much time was spent "in the field," and how much time the claimant spent actually writing reports and preparing treatment plans. Even the claimant, in his appeal, appears to concede that a majority of his time was spent in the field doing things other than typing progress reports. Mr. M estimated that 60% to 70% of a caseworkers time was in the field. The claimant testified that he felt the gradual effect of pain, tingling, and numbness in his left wrist and hand but did not know what was causing this problem.

The claimant is alleging an occupational disease in the form of repetitive trauma due to long hours doing word processing on a computer. In such a case, in determining whether the notice requirements of Section 409.001 have been met, it is essential that a date of injury be determined. Pursuant to Section 409.001(a)(2) the date of injury for an occupational disease is the date the employee knew or should have known that the injury may be related to the employment. Exactly when this occurred is not clear from the testimony of the witnesses. The hearing officer's finding of a _____ date of injury is not against the great weight and preponderance of the evidence and can be supported through inferences from the claimant's testimony.

It is undisputed that at some time around July 1st the claimant had a conversation with Ms. L, who at that time was a "personnel service tech." Exactly what was said is in dispute with the claimant asserting that he reported his injury to Ms. L. The carrier asserts, and Ms. L testified, that she was not in a managerial or supervisory position at that time. (Apparently, since then, Ms. L has assumed some workers' compensation coordinator duties.) The claimant is rather vague regarding whether he reported a work-related injury. Ms. L testified that on that date (she is uncertain when it was), she was engaged in idle "chit chat" with the claimant, that the claimant mentioned his hand hurting, and that she noticed a "knot" on his wrist. Both the claimant and Ms. L agree that it was Ms. L who suggested that it might be carpal tunnel syndrome (CTS), that one of Ms. L's relatives had had a similar problem, and that the claimant should see a doctor. Ms. L related that the claimant helped her switch chairs that day.

The claimant did not seek medical attention until July 27th when he saw Dr. Q. In an Initial Medical Report (TWCC-61) and accompanying forms, the date of injury is listed as both "_____" and "_____." The patient's history form, completed by the claimant, has a date of accident as "_____" and states the injury as being "stress." A diagram, prepared by the claimant, indicates aching in the back which is marked "error" and initialed by the claimant on August 2nd, and "pins & needles" and aching pain in the left wrist. The history is recited as:

> [T]he patient states that as a consequence of the repetitive use of his left wrist, he began to have pain in the left wrist with numbness and tingling sensation and also with a lump in the left wrist since 6/1/99.

Other portions of the report refer to the location of the injury as "At the job site." The tentative diagnosis was left CTS and a ganglion cyst in the left wrist. The claimant was taken off work and treated with ultrasound. The claimant testified that a copy of the off-work slip was "faxed" to the employer but there is no evidence to support that contention. An orthopedic evaluation of August 3rd by Dr. O references a _____ date of injury and has an impression of a left wrist sprain. The history states that the claimant "injured his left wrist at work secondary to accumulative, repetitive trauma . . . [which] became symptomatic on _____." This history lists the claimant as being "a data entry operator." Tinel's and Phalen's signs were negative. The claimant was terminated on August 5th for reasons unrelated to his alleged injury and went to work for another employer on September 7th. Other reports from Dr. Q change the diagnosis and impression from CTS to a left wrist sprain. There is no confirmed diagnosis of CTS.

The hearing officer, in his Statement of the Evidence and Discussion, comments:

> Claimant talked to [Ms. L] about ganglion cyst[s] but did not identify it as related to his work for Employer. Further, [Ms. L] was not a supervisor. Claimant spent a lot of time documenting his complaints but is not persuasive that any problems were caused by his work. Claimant did not timely report the injury. Claimant's argument that an off work slip dated July

27, 1999, sent by facsimile constituted notice is not persuasive. If it were believed that it was, in fact, sent to and received by Employer, it makes no reference to a work related injury. Claimant was not working during the period in which he asserts disability because he had been terminated and did not go back to work for another Employer until September 7, 1999.

The claimant, in his appeal, asserts that the hearing officer "did not give weight or credibility afforded to his credible testimony." That may be; however, 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).

Other parts of the claimant's appeal only repeat testimony and evidence presented at the CCH. As noted above, the hearing officer is the sole judge of the weight and credibility to be given to the evidence. While it is true Ms. L noticed the ganglion cyst, there is no evidence, medical or otherwise, that would indicate that the cyst was caused by his work. An occupational disease is "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. . . . The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). A repetitive trauma injury is "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." Section 401.011(36). An employee must prove, by a preponderance of the evidence, the compensability of an occupational disease. Texas Workers' Compensation Commission Appeal No. 960582, decided May 2, 1996, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). "[O]ne must not only prove that recurring, physically traumatic activities occurred on the job, but must also prove that a causal link exists between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared to employment generally." Texas Workers' Compensation Commission Appeal No. 950868, decided July 13, 1995, citing Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.).

The hearing officer determined that the claimant did not show that the actions involved in his employment are causally linked to his condition. 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.

Upon review of the record submitted, we find no reversible error. 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:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge