APPEAL NO. 001231

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 26, 2000. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease; that the date of injury is _____; that the appellant (carrier) is not relieved from liability under Section 409.002 because the claimant timely reported her injury to her employer under Section 409.001; and that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election of remedies. In its appeal, the 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 claimant testified that she is a front officer supervisor for (clinic) and that she does finance and billing for the clinic. She stated that her job requires her to do a lot of data entry on the computer and that her normal hours are from 8:00 a.m. to 5:00 p.m., Monday to Friday. She testified that in early March 1999, she began to notice that she was having pain and numbness in her wrists and hands. She stated that her fingers would become numb and then the numbness would travel into her arms. The claimant stated that in the period from December 1998 to March 1999, she was involved in a project at the clinic which required her to work substantial overtime, 35 to 40 hours in a two-week period, and that the project required her to do more typing than she normally did. She estimated that at least one-half of her time at work is spent on the computer.

On _____, the claimant had an appointment with Dr. B, one of the doctor's at the clinic. In progress notes from that visit, Dr. B noted that the claimant had "really been working at her computer a lot lately" and that she had developed bilateral wrist pain and numbness in her fingers. Dr. B diagnosed "nerve entrapment-muscle spasms." On April 6, 1999, Dr. B referred the claimant for nerve conduction studies. On May 14, 1999, Dr. G performed EMG and NCV studies on both upper extremities, which were normal. In August 10, 1999, progress notes, Dr. B repeated his diagnosis of bilateral nerve entrapment in the upper extremities and in a February 2, 2000, letter, Dr. B opined that the claimant's bilateral nerve entrapment injury is work related.

The claimant testified that she reported her injury to Ms. P, her supervisor, on _____, following her appointment with Dr. B. The claimant acknowledged that she and Ms. P talked about more than one potential cause of her injury; however, the claimant insisted that she told Ms. P that her injury was a result of the data entry work she performed for the employer. Ms. P testified that she does not believe that the claimant "reported a definite work-related injury to her on _____." Ms. P maintained that although they discussed the possibility that the data entry work had caused the claimant's

injury, they also discussed that work the claimant had done previously may have been the cause of her injury. Thus, Ms. P did not consider the claimant to have reported a work-related injury to her at that time, insisting that it was not until October 1999 that she realized the claimant was alleging a work-related injury. On cross-examination, Ms. P acknowledged that in the period from December 1998 to March 1999, the claimant and other workers with the clinic were involved in a major project creating data bases from patient charts and that the claimant performed a substantial amount of data entry in that project.

Initially, we will consider the carrier's challenge to the hearing officer's injury determination. 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 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. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The carrier contends that the hearing officer's injury and good cause determinations are against the great weight of the evidence. The hearing officer was acting within her province as the fact finder in deciding to credit the evidence from the claimant and Dr. B that she sustained a bilateral upper extremity injury, bilateral nerve entrapment, performing repetitive data entry work for the clinic. The hearing officer's determination that the claimant sustained a compensable occupational disease injury in the course and scope of her employment is supported by sufficient evidence, namely the claimant's testimony and the evidence from Dr. B, which the hearing officer was privileged to credit. Our review of the record does not reveal 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 hearing officer determined that the date of injury is _____, and that the claimant reported her injury to her supervisor, Ms. P, on _____. There was conflicting evidence on both of these issues, which presented questions of fact for the hearing officer. The hearing officer was acting within her province as the fact finder, in resolving the conflicts in the testimony of the claimant as to when she first realized her injury may be work related by crediting the evidence that it was not until her visit with Dr. B that she realized her injury

may be work related. That determination is not so contrary to the great weight and preponderance of the evidence as to compel its reversal on appeal. In addition, the fact that another fact finder may well have drawn different inferences from the evidence and found a date of injury earlier in March does not provide a basis for us to reverse the hearing officer's date-of-injury determination on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer further determined that the claimant timely reported her injury to her employer on _____, during her conversation with Ms. P. As the hearing officer noted, both the claimant and Ms. P testified that they discussed the claimant's symptoms in the _____, conversation and the fact that they might be work related. Ms. P testified that she did not believe that the claimant had "definitely" reported a work-related injury; however, we agree with the hearing officer that such an understanding on the part of Ms. P was not required in order to satisfy the notice requirements. The hearing officer was free to consider the testimony from Ms. P and the claimant about the _____, conversation, and to determine that the information provided by the claimant to Ms. P in that conversation was sufficient to put the employer on notice that the claimant was alleging a work-related injury.

Finally, we consider the election of remedies issue. In Bocanegra v. Aetna Life Ins. Co., 605 S.W.2d 848 (Tex. 1980), the court stated that the election of remedies doctrine may constitute a bar to relief when (1) one successfully exercises an informed choice (2) between two or more remedies, rights, or states of fact (3) which are so inconsistent as to (4) constitute manifest injustice. Critical to a finding of an election of remedies is the determination that the election of non-workers' compensation remedies was an informed choice. Texas Workers' Compensation Commission Appeal No. 981226, decided July 20, 1998. The claimant testified that she believed that once she reported her injury to Ms. P that was all she had to do to have her injury processed under workers' compensation insurance rather than group health insurance and that she intended all along to pursue a workers' compensation claim because her injury was work related. The hearing officer was acting within her province as the fact finder in crediting that testimony and in determining that, as a result, the claimant did not make an informed choice to seek group health benefits to the exclusion of workers' compensation benefits in this case. Our review of the hearing officer's determination that the claimant did not elect to forego workers' compensation benefits demonstrates that that determination is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. As such, we will not disturb it on appeal. Cain, *supra*; Pool, *supra*.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Thomas A. Knapp
Appeals Judge