APPEAL NO. 001497
FILED AUGUST 8, 2000

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 May 30, 2000, in _____, Texas, with _____ presiding as hearing officer. The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable injury to his left shoulder on _____, and that the date the claimant knew or should have known the left wrist injury may be related to the employment is _____. The hearing officer determined that the claimant reported the claimed injury on _____; that the claimant did timely report the claimed injury to the employer; that the claimant did not have good cause for not timely reporting the claimed injury; that the carrier is relieved of liability; and that on _____, the claimant did not sustain a compensable injury, in the form of an occupational disease, as a result of his work activities as a truck driver. The claimant appealed, stated that he did not know all of the Texas Workers' Compensation Commission rules, contended that he had good cause for not reporting the claimed injury earlier, urged that the decision of the hearing officer is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and requested that the Appeals Panel reverse the decision of the hearing officer. The carrier responded, contended that the claimant appealed only one finding of fact and did not appeal any conclusions of law, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

First, we note that the claimant appealed each finding of fact and each conclusion of law that are adverse to his interests. Perhaps the carrier did not receive each page of the claimant's appeal. However, the carrier's response addresses all of the determinations of the hearing officer. We will not send a copy of the claimant's appeal to the carrier and will not provide the carrier the opportunity to file an additional response.

We first address the determinations that the claimant did not timely notify the employer of the claimed left wrist injury and that he did not have good cause for not timely reporting the claimed injury. The parties stipulated that the date of injury for the claimed injury is _____, the date the claimant knew, or should have known, that the claimed injury may be related to his employment. The claimant did not contend that he notified the employer of the injury prior to _____, the date on the Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) in which he claimed a carpal tunnel syndrome (CTS) injury. In the TWCC-41, the claimant stated that the date of injury was _____. The claimant

testified that (Dr. G), a chiropractor, became his treating doctor for the _____ shoulder injury in November 1999; that he first saw Dr. G on _____; that he told Dr. G that he had burning and tingling in his left wrist; that Dr. G ordered an EMG; that the EMG was performed on January 11, 2000; that on _____, Dr. G told him that he had CTS; that he did not know that he had CTS until Dr. G told him; that that is the first time that he knew that he had separate injuries; that he signed the TWCC-41 in Dr. G's office on _____; and that that is the first notice of the claimed left wrist injury that he gave the employer. The date of the claimed left wrist injury and the date of notice to the employer are not disputed. Good cause for delay in reporting an injury must continue to the day that the notice is given. Texas Workers' Compensation Commission Appeal No. 941598, decided January 9, 1995. A determination that good cause existed or did not exist is reversed only if there is an abuse of discretion. Texas Workers' Compensation Commission Appeal No. 90115, decided March 3, 1995. The hearing officer did not abuse her discretion in determining that good cause did not exist until the claimed injury was reported on _____.

We next address the determination that the claimant did not sustain a left wrist injury in the course and scope of his employment. The claimant testified that he drove a truck; that he hauled about 10 or 12 forklifts a day; that two chains were used to secure a forklift to the truck; and that he "ratcheted" each chain about 25 times to tighten it. He said that before he injured his shoulder raising the hood of a truck, he had pain radiating from his neck down his shoulder and did not think anything about it. He said that after the _____, shoulder injury he worked light duty in an office of the employer. The safety technician of the employer testified that she had not "ratcheted" chains, that she had seen it done and had talked with people about "ratcheting," and that a chain would not be "ratcheted" 25 times to tighten it.

In a report dated January 11, 2000, Dr. G diagnosed mild left CTS based on EMG/NCV studies and his examination. In an Initial Medical Report (TWCC-61) dated February 11, 2000, Dr. G said that the claimant was experiencing numbness, stiffness, and pain in his left wrist and that the claimant said that his injury occurred by repetitive motion twisting and turning a ratchet for a long period of time.

The burden is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. The testimony of the claimant alone may be sufficient to satisfy the burden of proof. Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 1991. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove a claim, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the

weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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). An appeals level body is not a fact finder and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The determination of the hearing officer that the claimant did not sustain a left wrist injury in the course and scope of his employment is not 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Judy L. Stephens
Appeals Judge