APPEAL NO. 001550

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 June 14, 2000. At issue was whether the appellant/cross-respondent (claimant) sustained a repetitive trauma injury, the date of her injury (as defined in Section 408.007), whether she gave timely notice of her injury to her employer, and whether she had disability.

The hearing officer held that the claimant sustained a repetitive trauma injury; that the date she knew, or should have known, that her injury was related to her employment was _____; that she failed to give notice to her employer of this injury within 30 days of that date and had no good cause for the failure; and that she did not have disability because there was no compensable injury, although she had the inability to obtain and retain employment equivalent to her preinjury wage beginning February 9, 2000.

The claimant has appealed and argues that she did not know at all that she had a "condition called carpal tunnel syndrome [CTS] until _____, and that she gave timely notice to her employer on January 3, 2000. She points out that the date of injury listed on the report of injury was filled in by a supervisor, not by her. The respondent/cross-appellant (carrier) responds that this decision is supported by the evidence. The carrier appeals the determination that the claimant had a repetitive trauma injury in the form of CTS, arguing that expert medical evidence was required to prove causation. The carrier also appeals the finding that the claimant had the inability to obtain and retain employment due to the alleged CTS. There is no response to this appeal from the claimant.

DECISION

We affirm.

The claimant worked for (employer). Her job involved moving large rolls of paper, as well as pushing and pulling a heavy glue pot around the floor. It was also stipulated that her activities were repetitive. She testified at length about her activities and the weights she lifted and shifted. The claimant said that in mid-October 1999 her left hand began to go numb and tingle. The claimant made an appointment with her family doctor, Dr. H. By the time of the appointment, the pain and numbness were enough to awaken her at night. The sole medical record from Dr. H, dated _____, noted that the claimant had tingling and numbness over the previous three to four weeks.

The claimant said that Dr. H did not take her off work but that they discussed her job duties and he urged her to try not to work overtime. The claimant said that CTS was mentioned at this appointment. Dr. H referred the claimant to a neurologist and told her he thought she had a pinched nerve.

The claimant first saw the neurologist, Dr. HF, on December 9, 1999. The claimant said that it was on this date that she was told she had a work-related repetitive trauma

injury, CTS. The claimant had been working and continued to work. There was some testimony about another injury on _____, when the claimant tried to lift a heavy roll and injured her neck, collarbone, and leg. The claimant said she gave notice of both injuries on this date by filing a written accident report.

That report was in evidence and the claimant said it was intended as a report of both injuries. The date of injury is shown as "Oct 1999." The claimant said that this report was filled out for her by Mr. F. At this point, she was asked to see the company doctor at (clinic) and did so that same day. Bilateral wrist sprain and tenosynovitis was diagnosed and she was returned to work with restrictions. A therapy note from that same day noted that the claimant had problems over the last three months and that she had pain only when lifting at work.

The claimant began treatment for both injuries with Dr. O, who also testified by telephone. She said she was taken off work entirely on February 9, 2000. There was a record from Dr. O in evidence which indicated that the date of the CTS injury was _____. Dr. O stated on the telephone that his office had combined the two injuries. He was asked about any history he had taken for the CTS that indicated a specific event on _____, and he said that this history may have been confused with the _____, injury. Dr. O testified that the claimant was off work primarily due to her CTS. CTS was confirmed in an EMG of March 30, 2000.

Mr. F testified and was asked about the report of injury. He said that he filled out the report based upon what the claimant told him. He understood the allegation to be one of repetitive trauma. Mr. F said that the claimant was given an opportunity to read the accident report and he "assumed" that she did. Mr. F said that he had seen the incident of _____, but the claimant did not fill out an accident report for this. Mr. F said that he filled out the report after the claimant had seen the company nurse.

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). To the extent that the claimant contended her problems were related to a repetitive trauma injury, we note that Section 401.011(36) defines repetitive trauma injury as "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." To recover for an occupational disease of this type, one must not only prove that repetitious, physically traumatic activities occurred on the job, but also must prove that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally. Davis v. Employer's Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). Generally, lay testimony establishing a sequence of events which provides a strong, logically traceable connection between the event and the condition is sufficient proof of causation. Morgan v. Compugraphic Corp., 675 S.W.2d 729, 733 (Tex. 1984).

We do not agree that medical expert evidence was required in this case to prove causation.

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). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals level body is not a fact finder and 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.- Beaumont 1993, no writ). There is sufficient support on the issue of injury and the fact finding of an inability to work beginning February 9, 2000.

The harder issues are those of notice and date of injury. A claimant is required to give notice to an employer of an occupational disease within 30 days of the date that the employee knew or should have known that the injury may be related to the employment. Section 409.001(a)(2). While this is not necessarily the date that a diagnosis is reached, neither is the date of injury always the date of the first symptom or the first time medical treatment is sought. A layperson is not required to have more than the level of knowledge that a medical practitioner would have about causation. We note that Dr. H did not take the claimant off work, although the claimant says her duties were discussed and she was urged not to work overtime.

On the other hand, the actions that followed the date of injury that the claimant contended, December 9, 1999, were not measurably different from those after Dr. H's examination. The claimant was not taken off work and she did not report the CTS until after another incident at work had occurred on _____. At that time, and apparently after going to Dr. O, the claimant contended injury in October 1999. It is the resolution of such conflicting evidence that must be left to the judgement of the hearing officer. While we do not agree with the hearing officer's statement that the December 9, 1999, date was "created," as there was evidence that would also support this date of injury, the Appeals Panel does not reweigh the evidence, even when the evidence would support a contrary inference. The decision of the hearing officer will be set aside only if the evidence

supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that the evidence against the hearing officer's decision amounts to a great weight and, therefore, affirm the decision and order on all appealed points.

Susan M. Kelley
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Gary L. Kilgore
Appeals Judge