APPEAL NO. 001554

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 May 18, 2000. The hearing officer determined that the appellant (claimant herein) did not sustain a compensable injury and did not have disability. The hearing officer also found that the date the claimant knew, or should have known, that his claimed back injury was related to his employment was _____, and that the claimant failed to report his alleged injury until November 17, 1999. The claimant appeals, challenging the hearing officer's injury, date of injury, timely reporting, and disability determinations as being contrary to the evidence. The respondent (carrier herein) replies that the determinations of the hearing officer are supported by legally sufficient evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarizes the evidence in his decision and we adopt his rendition of the facts. We will only briefly touch on the facts most germane to the appeal. This includes testimony from the claimant that he sustained a repetitive trauma injury to his back as a result of repetitive trauma involving his job as a machine operator. The claimant testified concerning the repetitive nature of his work. His testimony in this regard was somewhat contradicted by the testimony of Mr. H, the site supervisor, who described the claimant's job as one mostly of "hurry up and wait." The claimant testified that in September his back began hurting. There was evidence that the claimant was informed by his doctor on _____, that his back problems were not related to his previous ankle injury. The claimant contended that he did not realize that his back problems were work related until November 1, 1999. There is some conflict in the evidence as to when the claimant first actually reported a work-related injury but there is evidence that he reported such an injury to his supervisor on November 17, 1999.

Section 408.007 provides that the date of injury for an occupational disease "is the date on which the employee knew or should have known that the disease may be related to the employment." In the present case, the hearing officer found that in regard to the claimant's alleged back injury this date was _____. The claimant asserts that the hearing officer's date-of-injury determination is against the great weight of the evidence, insisting that he did not know his condition was work related until later. The date of injury under Section 408.007 is a question of fact for the hearing officer to resolve. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Applying this standard, we find that the hearing officer's determination regarding the date of the injury was sufficiently supported by the evidence.

The hearing officer's resolution of the timely reporting issue was closely related to his resolution of the date of injury. The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the date the injury occurred. Section 409.001. The hearing officer found that the claimant did not report his injury until November 17, 1999. There is evidence to support this factual determination. Given a date of injury of _____, the claimant's report of injury was clearly untimely. The claimant's only response to the hearing officer's conclusion that he did not timely report his injury was his contention that the date of injury was later than _____, and we have previously addressed this argument.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. As stated previously, the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of 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, 702 (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, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

A finding of injury may be based upon the testimony of the claimant alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present case, the hearing officer found no injury contrary to the testimony of the claimant. The claimant had the burden to prove he was injured in the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). We cannot say that the hearing officer's determination is against the great weight and preponderance of the evidence.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Judy L. Stephens
Appeals Judge