APPEAL NO. 001588

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 June 26, 2000. The hearing officer determined that the appellant/cross-respondent (claimant herein) sustained a compensable injury in the form of an occupational disease on _____; that the claimant provided timely notice to his employer pursuant to Section 409.001; that the respondent/cross-appellant (carrier herein) is not relieved from liability under Section 409.002 because the claimant provided timely notice; and that the claimant does not have disability. The carrier appealed the hearing officer's determinations concerning injury, date of injury and timely reporting. The carrier argues that the evidence did not support these determinations. The claimant responds that the determinations challenged by the carrier were sufficiently supported by the evidence. The claimant appeals the hearing officer's resolution of the disability issue contending that he established a period of disability through his testimony and medical records. The carrier responds that, as the finder of fact, the hearing officer was free to disbelieve this 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 appeals of both the carrier and the claimant are essentially based upon the argument that certain of the hearing officer's factual findings were contrary to the evidence. We have stated many times our standard of review regarding such factual challenges which is set out in Texas Workers' Compensation Commission Appeal No. 000628, decided May 10, 2000, as follows:

> Section 410.165(a) provides that the contested case 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). 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). When

> reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

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. Generally corroboration of an injury is not required and an injury may be found based upon a claimant's testimony alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). The claimant testified that he was a truck driver for the employer and that his duties caused bilateral carpal tunnel syndrome (CTS). The claimant testified that his duties included repetitiously unloading windows from his truck while making deliveries to customers and that he would routinely handle 500 or more windows a day. He also attributed his bilateral CTS to having to grip the steering wheel of his truck and to shift gears. The claimant presented medical evidence relating his bilateral CTS to his work. The carrier put into evidence the report of Dr. Z, a peer review doctor who examined the claimant's medical records job description, expressing the opinion that there was no causal relationship between the claimant's CTS and his work. Obviously, there is conflicting evidence concerning injury. Applying the standard of review discussed above we find sufficient evidence to support the decision of the hearing officer regarding injury.

Section 401.011(26) states that an injury means damage or harm to the physical structure of the body and that term includes an occupational disease. Section 401.011(34) defines occupational disease to include repetitive trauma injuries. 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 my be related to the employment." The hearing officer determined that the claimant's date of injury for his occupational disease was _____, being the date he first knew that his occupational disease or condition was related to his employment. The carrier asserts that the hearing officer's date-of-injury determination is against the great weight of the evidence, contending the claimant should have known much sooner that his problem was related to work because he had symptoms of pain and numbness which he thought were related to his work. The date of injury under Section 408.007 is a question of fact for the hearing officer to resolve. The hearing officer stated in his decision that while the claimant had symptoms which he related to work prior to _____, the symptoms had not manifested themselves to a degree and for a duration that a reasonable person, exercising reasonable diligence, should have known that his injury was likely work related. Applying our standard of review, we do not find this factual determination was contrary to the overwhelming 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 injury occurred. Section 409.001. It was not disputed that the claimant reported his injury on February 11, 2000. Given a date of injury of February 8, 2000, his report of injury was clearly timely.

Finally, disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The claimant points out that he presented testimony and medical evidence supporting his claim of disability. As the carrier points out, the hearing officer was not required to be persuaded by this evidence. Again, applying our standard of review, we find no error.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Philip F. O'Neill
Appeals Judge