APPEAL NO. 001599

Following a contested case hearing held on June 14, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by concluding that the appellant/cross-respondent (claimant) sustained a "compensable" right wrist sprain injury on _____; that the respondent/cross-appellant (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify the employer pursuant to Section 409.001 and because neither the employer nor the carrier had actual notice of the claimant's injury; and that the claimant did not have disability from June 28, 1999, through the date of the hearing. The claimant appeals the hearing officer's determinations that she failed to prove that her right wrist injury was in the nature of derangement of the right wrist; that a health insurance form did not provide notice of the claimed injury; that the carrier did not have actual notice of the injury before June 26, 1999; and that her inability to "obtain or [sic] retain" employment at her preinjury wage was not at any time due to a right wrist sprain. The carrier filed an appeal conditioned on the claimant's filing an appeal, challenging the determination that the claimant sustained a right wrist sprain injury in the course and scope of her employment. The carrier filed a response to the claimant's appeal. The file does not contain a response from the claimant to the carrier's appeal.

DECISION

Affirmed.

The claimant testified that on _____, while employed by (employer), apparently a staff leasing business, and assigned by the stipulated employer to work at (plant), assembling vacuum cleaners, she pushed down on a vacuum cleaner with her right hand and hurt her wrist. She said that shortly later a plant floor manager, Mr. M, came by and she told him that she was assembling a vacuum cleaner and hurt her hand. The claimant also said that Mr. M was the only supervisor she informed of her injury. In his affidavit, Mr. M states that he was on vacation and not at work on _____. He further stated that he had no recall of the claimant's ever telling him she had been injured on the job.

The claimant further testified that on June 4, 1999, her employment was terminated and that Ms. C, the employer's on-site coordinator, advised her that she was being laid off because the work had slowed and because she could not meet her quotas. She acknowledged having subsequently filed a sex discrimination charge against the employer because several men were hired after she was let go. She further stated that she subsequently commenced chiropractic treatment for her wrist with Dr. F. Dr. F's records reflect that the claimant's initial visit was on June 18, 1999, and that she gave a history of packing a vacuum box and the box gave way causing her to twist her wrist. Dr. F's Initial Medical Report (TWCC-61) dated June 21, 1999, states the following three diagnostic codes: (a) 959.3 (unspecified injury to elbow, forearm, and wrist); (b) 842.0 (sprain and strain of wrist); and (c) 354.0 (carpal tunnel syndrome). The claimant did not contend that

she had carpal tunnel syndrome. In her answers to the carrier's interrogatories the claimant stated that she hurt her wrist while assembling a vacuum cleaner when "in the process of trying to make the lid lift." The claimant also acknowledged having been injured in a motor vehicle accident (MVA) in October 1999 but stated that her wrist was not treated at the hospital and was not further injured in the MVA. Dr. F's record of October 25, 1999, reflects that the claimant was involved in an MVA on October 19, 1999, and that the claimant stated that "from the accident, she is having an increase in symptomatology and increase in pain with the pain in her wrist increasing dramatically, as well as pain throughout her entire spine."

In evidence are more than 40 "Return to Work Recommendation" forms from Dr. F keeping the claimant off work during the period from June 28, 1999, to June 12, 2000. The claimant, who indicated she had not worked since her employment was terminated, testified that she received unemployment compensation benefits from July to December 1999. Although the disputed issue concerned whether the claimant had disability from June 28, 1999, through the date of the hearing, her attorney stated in opening statement that the claimant was seeking disability only for the period from December 23, 1999, which apparently was the date her unemployment benefit payments stopped, through the dates of the hearing because she had received the unemployment compensation benefits prior to that time.

The claimant called Ms. N, her sister and coworker, as a witness. Ms. N testified that she saw the claimant talking to Mr. M shortly after her accident. She acknowledged not hearing the conversation and conceded that her employment was also terminated on June 4, 1999. The claimant also introduced the affidavit of coworker Ms. R which stated that "on or about _____," she saw an expression of pain on the claimant's face and also saw her conversing with Mr. M who did not appear to be paying much attention to her.

The claimant introduced a carrier's Health Insurance Claim Form signed by Dr. F on June 22, 1999, which contains the claimant's name and address, the insured's (employer) name and address, the employer's name, a date of injury of "_____," four diagnosis codes, and the procedure, service, and supplies codes and charges for six procedures provided to the claimant on June 18, 1999. This form states no "facts showing compensability." *See* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1(a)(3) (Rule 124.1(a)(3).

The claimant had the burden to prove that she sustained the claimed injury, that she provided the employer with timely notice of the injury pursuant to Section 409.001, and that she had disability as that term is defined in Section 401.011(16). Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. This also hold true for proving timely notice of injury to the employer. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing

officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer could accept the claimant's testimony that she actually did injure her right wrist on _____, in the process of assembling or boxing a vacuum cleaner at work and could further conclude from Dr. F's records that the nature of the wrist injury was a sprain. As for the claimant's having provided timely notice to the employer, the claimant testified that she gave notice to Mr. A, a supervisor, shortly after the occurrence of the injury and Mr. M stated that he was not at work that day. This contradictory evidence was a matter for the hearing officer to resolve. Section 409.001 requires that notice of injury be given to the employer, not to the carrier. As for all the effort expended at the hearing by the claimant to make a case that the insurance claim form received by the carrier within 30 days of _____, constituted timely notice of the injury, even were that form to have provided notice of a work-related injury, which it did not, it would have been notice to the carrier (*see* Section 409.021 and Rule 124.1(a)), not notice to the employer (*see* Section 409.001). The hearing officer could also conclude that this insurance form did not constitute actual knowledge by the carrier of the claimant's injury (*see* Section 409.002(1)). Further, the hearing officer could conclude from the totality of the evidence that the claimant's inability to obtain and retain employment at her preinjury wages was not due to her right wrist sprain. Also, since the claimant failed to provide the employer with timely notice of the claimed injury, she did not therefore sustain a compensable injury and thus, by definition, did not have disability.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge