

APPEAL NO. 001686

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 13, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the date of injury of her alleged injury is _____; and that the claimant timely reported her alleged injury to her employer. In her appeal, the claimant essentially argues that the hearing officer's determination that she did not sustain a compensable occupational disease injury is against the great weight of the evidence, emphasizing the evidence she believes establishes the causal connection between her bilateral carpal tunnel syndrome (CTS) and her work duties. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance of the injury determination. The self-insured filed a cross-appeal contending that the hearing officer's date-of-injury and timely notice determinations are against the great weight of the evidence. The appeals file does not contain a response to the self-insured's appeal from the claimant.

DECISION

Affirmed.

The claimant testified that she has been employed by the (employer) for over 11 years. She stated that initially she held an administrative position, namely an inspector over planning and research, and that in October 1998 she transferred to the position of operations supervisor. The claimant testified that in the position of operations manager, she worked a 24-hour shift and then was off for 48 hours before her next shift. She stated that her job in operations required her to perform a lot of data entry work on the computer in relation to preparing various reports. She estimated that she worked on the computer for an average of six hours of a 24-hour shift. On cross-examination, the claimant testified that she was required to perform a lot of data entry work in both of the positions she held with the employer; however, she maintained that the operations position required her to do more data entry work on a regular basis because it entailed daily paperwork.

The claimant testified that she was diagnosed with bilateral CTS on _____, after EMG testing of April 7, 1999, revealed the condition. She stated that Dr. PV advised her of the diagnosis on _____, and further advised her that the condition was work related after talking to her about her job duties. The claimant acknowledged that she had had problems with numbness and tingling in her hands prior to April 1999; however, she further stated that she primarily had those problems after she awoke in the morning and, thus, she thought the problems were caused by her sleeping on her hands. The claimant testified that she reported her injury to her supervisor on May 7, 1999, and that the employer had her prepare an Employer's First Report of Injury or Illness (TWCC-1), which she did on May 8, 1999.

The self-insured called Mr. F, the director of public safety for the employer, as a witness at the hearing. Mr. F testified that neither of the positions held by the claimant required her to perform significant data entry work. To the contrary, Mr. F stated that the claimant primarily had to complete three types of reports, a daily summary report of the fire and EMS calls, a duty roster, and a report for each fire-related call. Mr. F insisted that each of those forms was short in length and that they typically required less than one-half a page of "free-text typing."

In a report dated February 1, 1999, Dr. MV noted that the claimant had symptoms suggestive of CTS and referred the claimant for EMG testing to confirm the tentative diagnosis. Thereafter, the claimant changed treating doctors to Dr. PV. In a July 8, 1999, progress report, Dr. PV noted that the claimant had worked for nearly 10 years with the employer "where she did a lot of typing on a computer" and concluded that "this would be responsible for her [CTS] which [is] clinically evident." In a May 17, 2000, report, Dr. PV noted that the claimant "had a long history of repetitive injury of her wrists because of typing and so forth and office work that she did." Dr. PV concluded that "I would support her claim for [CTS] being caused by repetitive injury while at work."

The claimant has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before her. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. The testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain a compensable repetitive trauma, occupational disease injury. A review of the hearing officer's decision demonstrates that he simply was not persuaded that the claimant presented sufficient evidence to demonstrate the causal connection between her CTS and her work activities. The hearing officer was acting within his province as the fact finder in deciding to give more weight to the testimony from Mr. F that the claimant's job did not require her to perform repetitively traumatic activities than to the claimant's testimony as to the nature of her duties and the amount of data entry required. The hearing officer was likewise free to reject Dr. MV's causation opinion even in the absence of a contrary medical report. Our review of the record does not reveal that the hearing officer's determination that the claimant did not sustain a repetitive trauma, occupational disease injury in the

course and scope of her employment as a bus driver is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 15 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to reverse that determination on appeal.

The carrier asserts error in the hearing officer's date-of-injury determination. There was conflicting evidence on the issue of when the claimant knew or should have known that her condition might be work related. The claimant testified that her date of injury was _____, the day Dr. PV confirmed the CTS diagnosis based upon the claimant's EMG results and advised her that in his opinion her condition is work related. There was evidence from which the hearing officer could have determined an earlier date of injury. However, it was a matter for the hearing officer to resolve the conflicts and inconsistencies and to determine the claimant's date of injury. Nothing in our review of the hearing officer's date-of-injury determination reveals that it is so contrary to the great weight and preponderance of the evidence as to compel its reversal on appeal. Pool; Cain.

The success of the carrier's challenge to the hearing officer's determination that the claimant gave timely notice to her employer of her injury on May 8, 1999, is premised upon the success of its argument that the claimant had an earlier date of injury. In light of our affirmance of the date-of-injury determination, we likewise affirm his determination that the claimant timely reported her alleged injury to the employer.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge