

APPEAL NO. 001975

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 August 1, 2000. The issues at the CCH were whether the respondent (claimant) had sustained a compensable injury in the form of an occupational disease, carpal tunnel syndrome (CTS), the date of injury, timeliness of notice to the employer, alleged waiver of the appellant's (carrier) right to dispute compensability, and disability. The hearing officer determined that the claimant had sustained a compensable repetitive trauma injury, that the date of injury was _____, that the claimant had timely notified his employer of the injury, that the carrier had not waived the right to dispute the injury, and that the claimant had disability. The carrier appealed the hearing officer's determinations of a compensable injury, the date of injury, timely notice to the employer, and disability. The claimant responds that the hearing officer's decision is correct and requests that it be affirmed. The hearing officer's decision and order that the carrier did not waive the right to contest the compensability of the injury has not been appealed and has become final.

DECISION

Affirmed.

The claimant is a bus driver for (employer). He has worked for the employer and its predecessors in interest for more than 30 years. In late 1999 he began to experience pain in his hands and wrists which woke him several times a night. At his daughter's urging, he sought medical treatment with his family doctor, Dr. G. The claimant first saw Dr. G for this problem on November 5, 1999. After examining the claimant, Dr. G advised the claimant that he believed that the problem was CTS and referred the claimant to a specialist, Dr. P. An appointment was scheduled and the claimant went to Dr. P on November 10, 1999. Dr. P examined the claimant briefly and injected the claimant's wrist with cortisone.

The claimant obtained relief from his symptoms with the cortisone injection and the relief continued through his return to Dr. P for a follow-up visit on December 3, 1999. Later that month, however, the claimant had a recurrence of symptoms and scheduled another appointment with Dr. P for _____. During the January appointment, Dr. P advised the claimant that the condition would require surgery and suggested that the claimant's occupation was the cause of his CTS. The parties stipulated that the claimant reported a work-related injury to his employer on January 24, 2000.

The carrier initially argues that the evidence was insufficient to establish a causal connection between the claimant's employment and the carpal tunnel injury. The claimant testified that he was driving approximately 500 miles a day at or about the time of the onset of the injury. Although a diagnosis of CTS must be based on expert medical evidence, we have routinely held that the cause of the CTS, or repetitive trauma wrist injury, can be established by the testimony of the claimant alone if found credible by the hearing officer. See, *e.g.*, Texas Workers' Compensation Commission Appeal No. 961008, decided July

1, 1996; Texas Workers' Compensation Commission Appeal No. 941077, decided September 26, 1994; and Houston Independent School District v. Harrison, 744 S.W.2d 298 (Tex. App.- Houston [1st Dist.] 1987, no writ). The hearing officer could find, and did find, that the claimant's employment was of such a type and character as to have caused the carpal tunnel injury.

The claimant testified that he was aware that he had CTS before _____, but did not relate it to his employment until Dr. P established a connection between the two. The hearing officer found the claimant's testimony credible and found that he knew or should have known that the injury was related to his employment on _____. The carrier argues that the claimant should have known that the CTS could be related to his employment not later than November 5, 1999, when he was advised of the diagnosis. The hearing officer evidently found the claimant's testimony credible and, in light of the testimony that the problems were severe at night but milder during the day, we will defer to the hearing officer's determination.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). A claimant's testimony alone may be sufficient to prove an injury. The testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could 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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The carrier's appeal of the hearing officer's decision that the claimant gave notice of the injury to his employer within 30 days of the date of injury and had disability resulting from the injury necessarily rests on the outcome of its appeal of the existence of a work-related injury and the date of injury. Because those findings are affirmed, the remaining findings of the hearing officer concerning timely reporting and disability are likewise supported by the evidence and are affirmed.

The decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge