APPEAL NO. 002030

Following a contested case hearing held on August 17, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the appellant (claimant herein) did not sustain a compensable injury in the form of an occupational disease; that the date of the claimed injury was _____; that the claimant did not timely report the injury to her employer; and that the claimant did not sustain disability. The claimant appeals, arguing that these determinations were contrary to the evidence. The respondent (carrier herein) replies that there was sufficient evidence to support the decision of the hearing officer.

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 claimant testified that she worked as a unit secretary at a hospital. There was conflict in the evidence concerning how much of the claimant's job involved repetitive tasks such as typing. The claimant sought medical treatment for left wrist pain on _____, from Dr. G. Dr. G ordered an EMG which was performed on July 20, 1999. The report of the EMG stated, "Left wrist pain aggravated by wrist movement, dysesthesia in the left hand." The claimant testified that she first knew her condition was work related on _____. The claimant was diagnosed with carpal tunnel syndrome on March 22, 2000, and placed off work. The claimant first reported an injury to her employer on March 22, 2000, and testified that she has been unable to work as a result of her injury since March 22, 2000.

We first address the issue of injury. 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. Section 410.165(a) provides that 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). 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). Generally, corroboration of an injury is not required and 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). Here, there was conflicting evidence concerning whether the claimant suffered an injury on the job. The claimant contended that she suffered an injury due to repetitive trauma from her job duties. There was conflicting testimony concerning the claimant's job duties. The claimant testified that her job duties involved a great deal of typing, while the claimant's supervisor testified that the claimant's job duties were more varied and involved no more than two hours of typing per day. The determination that the claimant did not suffer an injury is not contrary to the overwhelming evidence.

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. The 1989 Act provides that a determination by the Texas Workers' Compensation Commission that good cause exists for failure to provide notice of injury to an employer in a timely manner or actual knowledge of the injury by the employer can relieve the claimant of the requirement to report the injury. Section 409.002. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). To be effective, notice of injury needs to inform the employer of the general nature of the injury and the fact it is job related. DeAnda v. Home Ins. Co., 618 S.W.2d 529, 533 (Tex. 1980). Thus, where the employer knew of a physical problem but was not informed it was job related, there was not notice of injury. Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied). Also, the actual knowledge exception requires actual knowledge of an injury. Fairchild v. Insurance Company of North America, 610 S.W.2d 217, 220 (Tex. Civ. App.-Houston [1st Dist.] 1980, no writ). The burden is on the claimant to prove actual knowledge. Miller v. Texas Employers' Insurance Association, 488 S.W.2d 489 (Tex. Civ. App.-Beaumont 1972, writ ref'd n.r.e.).

In the present case, the claimant argues that she timely reported her injury on March 22, 2000. She argues that her date of injury was _____, so she reported her injury within 30 days and good cause was not really an issue. Thus, the issue of timely notice really turns on the issue of the date of the claimant's injury, which the hearing officer found to be _____, which is clearly more than 30 days prior to the time the claimant reported an injury.

The hearing officer found that the claimant knew or should have known that her tendinitis was work related on _____. Section 408.007 provides as follows:

> For purposes of this subtitle, 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.

Under Section 401.011(34), an occupational disease includes repetitive trauma injuries, which is essentially what the claimant is alleging here. The date of an occupational disease is a question of fact. Texas Workers' Compensation Commission Appeal No. 94415, decided May 23, 1994. We stated in Texas Workers' Compensation Commission Appeal No. 992783, decided January 26, 2000, "[t]he date is somewhat of a 'moving target,' but need not be as early as the first symptoms nor as late as a definitive diagnosis." Applying our standard of review set out above, we find sufficient evidence to support the hearing officer's factual determination concerning the date of injury. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Finally, with no compensable injury found and the carrier relieved of liability, there is no loss upon which to find disability. By definition, disability depends upon a compensable injury. *See* Section 401.011(16).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Tommy W. Lueders
Appeals Judge