APPEAL NO. 002096

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 issues by determining that the respondent (claimant) had sustained a compensable injury on _____; that the claimant had given timely notice of the injury to his employer; that the claimant had not sustained any disability resulting from the compensable injury; and that the appellant (carrier) had not waived the right to contest the compensability of the injury. The carrier asserts that the hearing officer's determinations that the claimant sustained a compensable injury and gave timely notice of the injury to the employer are against the great weight and preponderance of the evidence and requests that we reverse the decision of the hearing officer. The carrier also asserts that the hearing officer abused his discretion in adding an issue regarding the date of the injury. There is no response from the claimant.

DECISION

We affirm the decision of the hearing officer.

The disputed issues in this matter revolve around an injury to the claimant's right thumb that the claimant testified occurred on _____. The carrier defended its position on the grounds that the claimant was not working at the job where he alleges he was injured on _____, and asserts that the claimant is not credible and his testimony is contrary to the other testimony from the other witnesses.

The carrier asserts that the hearing officer committed reversible error by adding, on his own motion, an issue regarding the date of injury. The hearing officer determined that the issue had been actually litigated by the parties and that the addition of the issue was necessary for the proper and expeditious resolution of the parties' dispute. In Texas Workers' Compensation Commission Appeal No. 992070, decided November 4, 1999, we stated:

> The Appeals Panel has observed that the resolution of disputed issues is not governed by the strict rules of pleading as practiced at common law or in the district courts of the state of Texas. *See* Texas Workers' Compensation Commission Appeal No. 951848, decided December 18, 1994 [sic, should be 1995], and cases discussed therein. Thus, some leeway, consistent with express provisions of the 1989 Act and implementing rules, is to be given to the parties to resolve substantive issues as expeditiously as possible provided that due process principles of fundamental fairness are observed in the joining of issues at each stage of the adjudicatory process. We have also stressed that the inclusion of a date of injury is "essential" to resolving the compensability of an injury. Texas Workers' Compensation Commission Appeal No. 94713, decided July 12, 1994. Consistent with these principles, we have not required that the date of injury found by a hearing officer be the

> same as the date alleged by the claimant when the evidence indicates otherwise. Texas Workers' Compensation Commission Appeal No. 941029, decided September 16, 1994. Nor must a claimant in all cases "pinpoint" a date of injury. *See* Texas Workers' Compensation Commission Appeal No. 960997, decided July 10, 1996. This is particularly true in claimed repetitive trauma injury cases where the date of injury is always somewhat of a moving target. *See* Texas Workers' Compensation Commission Appeal No. 94894, decided August 25, 1994. It is also true in cases of discrete trauma injuries. *See* Texas Workers' Compensation Commission Appeal No. 941398, decided December 1, 1994, where the Appeals Panel affirmed a finding of a hearing officer that the date of a discrete injury was June 15th, not August 17th as initially claimed. Similarly, in Texas Workers' Compensation Commission Appeal No. 91123, decided February 7, 1992, the Appeals Panel wrote that the 1989 Act "does not require that an issue as to time of injury be restricted to the date on the notice of injury when examined in the adjudication process." This is not to say that a claimant may be so vague about a date of injury or otherwise so confuse the question that the carrier is not given a fair opportunity to defend the claim or that a party should be allowed to benefit from such confusion or intentional obfuscation by making no attempt to clarify the matter either at a BRC [benefit review conference] or in response to a report of a BRC.

It is clear from the evidence presented that the claimant was alleging that he had sustained an injury at a specific location while working for (employer). The claimant believed that he had been injured on one day, but the hearing officer found that the evidence indicated that the injury had actually taken place on the Friday following the Friday on which the claimant initially believed the injury had occurred. The hearing officer was not bound to only find only that an injury had either occurred on _____, or not, but could expand the inquiry, if the evidence so indicated, to determine if the injury could have occurred on a date near the one alleged. To do otherwise is to open the floodgates for litigation over the exact date an injury is alleged to have occurred, a result which we find to be contrary to the mandate of the 1989 Act to efficiently resolve disputes between employers, employees, and carriers. The carrier's argument is found to be without merit.

The hearing officer found the claimant to be a credible witness and found some support for the claimant's testimony in the deposition testimony of Mr. D. The hearing officer did not believe the statements and testimony offered by the carrier to be credible and chose to give greater weight to the claimant's testimony. 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, although 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. In a case such as the one before us where both parties presented evidence on the disputed issues, 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, 244 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 his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Finding no reversible error in the record and finding the determinations of the hearing officer supported by the evidence, we affirm the decision and order.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge