

APPEAL NO. 002205

Following a contested case hearing held on August 29, 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 repetitive trauma lumbar injury on _____; that the claimant did not timely report the injury to his employer and failed to show good cause for the failure to timely report the injury; that there was no loss of earning capacity as a result of the injury of _____; and that the claimant had been unable to work since April 21, 2000. The hearing officer also found that the appellant (carrier) had failed to dispute the compensability of the injury within 60 days of the date of injury and had waived the right to contest compensability. The hearing officer then held that the claimant's lumbar injury of _____, was compensable and that the claimant had disability resulting from the compensable lumbar injury. The carrier appealed, asserting that the hearing officer's findings that the carrier did not timely dispute the compensability of the alleged low back injury, that the carrier had waived the right to dispute the compensability of the claimed injury, and that the claimant had been unable to work since April 21, 2000, were against the great weight of the evidence. The carrier requested that the hearing officer's decision and order be reversed and a new order be rendered in its favor. The claimant responded that the hearing officer's decision is correct and should be affirmed.

DECISION

The decision and order of the hearing officer are affirmed.

The claimant worked as a cook at (the base) for (employer). The claimant asserted that as a result of her work duties as a cook, she sustained two injuries, a repetitive trauma injury to her lumbar spine and a bilateral carpal tunnel injury. The two injuries have different dates of injury, but were consolidated at the hearing. The hearing officer's decision and order addressed each claim separately and separate findings of fact and conclusions of law were made in each claim. The hearing officer found in favor of the claimant on the bilateral carpal tunnel claim and that determination has not been appealed. The carrier has appealed the hearing officer's determination that it received written notice of the alleged lumbar spine injury on _____, and failed to dispute that injury in a timely manner. It is noted that findings of fact were made by the hearing officer that, but for the waiver of the right to contest compensability, would have resulted in a determination that the claimant did not sustain a compensable injury in the form of a repetitive trauma injury to the lumbar spine and is not entitled to benefits under the 1989 Act.

The crux of the carrier's appeal is its assertion that the hearing officer's determination that it did not dispute the compensability of the lumbar spine injury within the time allowed by law and thereby waived the right to dispute the compensability of the injury is against the great weight and preponderance of the evidence. Evidence, in the form of several Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) forms, were admitted on that disputed issue. One of the TWCC-21s, dated May 10, 2000, stated

on its face that the carrier had received written notice of the low back and bilateral carpal tunnel injury claims on _____. Another TWCC-21, dated June 22, 2000, stated that the carrier had received notice of a claimed injury to “back [and] both legs” on _____. The carrier argued that it did not receive written notice of the low back injury until _____, as set forth in its June 22, 2000, TWCC-21.

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). The trier of fact may believe all, part, or none of the evidence offered by the parties. 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. 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).

The evidence offered by the carrier regarding the date the carrier received written notice of the lumbar injury was internally inconsistent. The hearing officer was faced with some evidence that the carrier had received written notice of the low back injury on _____, while other evidence, also generated by the carrier, indicated that the carrier had received written notice of a back injury on _____. The hearing officer weighed the evidence and found that the evidence showing the carrier had received written notice of the low back injury on _____ was more credible than the evidence that the carrier received written notice of the back injury on April 27. 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 determination of the hearing officer that the carrier received written notice of a low back injury on _____, we will not substitute our judgement for his. Texas Workers’ Compensation Commission Appeal No. 94044, decided February 17, 1994. The hearing officer’s determination that the carrier received written notice of a work-related lumbar injury on _____, is affirmed.

Having received written notice of a work-related low back injury on _____, the carrier was obligated to either accept or dispute the claimed injury on or before the expiration of 60 days from the date of the notice. Section 409.021(c). The carrier was obligated to dispute the low back claim not later than May 1, 2000, or waive the right to do so unless it could establish a right to reopen the issue of compensability by virtue of newly discovered evidence. The carrier did not dispute the compensability of the listed low back and bilateral carpal tunnel injuries until at least May 10, 2000, the date of the first TWCC-21. The carrier did not allege that it was entitled to reopen the compensability due to newly discovered evidence and the hearing officer correctly applied the law in ruling that the carrier had waived the right to dispute the compensability of the low back injury.

The hearing officer's decision and order are not contrary to the great weight and preponderance of the evidence, there is no reversible error, and the hearing officer's decision and order are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge