APPEAL NO. 002247

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 29, 2000. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury in the form of an occupational disease, the date of that injury in accordance with Section 408.007, and whether the appellant (carrier) was relieved of liability due to the failure of the claimant to give timely notice of her injury to her employer.

The hearing officer found that the claimant sustained a repetitive trauma injury; that she knew or should have known her injury was related to her impairment on _____; and that she gave timely notice of her injury to the employer on February 1, 2000.

The carrier has not appealed findings that the claimant had a work-related carpal tunnel syndrome (CTS) injury. However, the carrier appeals the determinations on date of injury, arguing that the claimant first knew or should have known that she had a serious injury on _____, and that she failed to give timely notice to her employer. The claimant responds that the record refutes the assertion that the claimant knew of her injury on _____.

DECISION

We affirm.

The record is very sparse; the brief testimony developed only that the claimant worked as a customer service representative for the employer involving computer keyboard entry. There is no appeal of the findings that she was compensably injured.

On December 9, 1999, the claimant began to notice pain in her left hand (a medical record in evidence stated that the claimant was right-handed). She said that the next week her hand hurt enough to awaken her at night. She treated it with ointments. The claimant said she concluded this was related to working overtime and would clear up. She was terminated for insubordination on December 14, 1999.

The claimant said that she did not see a doctor until January 18, 2000, and that this first visit was apparently tied in to receipt of her tax refund. She saw her family doctor, Dr. B, on January 18, 2000, and was told that she had work-related CTS. Dr. B referred the claimant to Dr. V, who did further testing and determined that the claimant had a repetitive trauma injury. Dr. V also noted that the claimant had seen her family doctor on _____, and was told that she had a serious condition. The claimant said that she did not understand why this was in the report of Dr. V because she had not told him this and it was in fact not true.

Section 408.007 states that the date of injury for an occupational disease (which includes a repetitive trauma injury) is "the date on which the employee knew or should have known that the disease may be related to the employment." While the hearing officer makes several findings as to whether the claimant "trivialized" her injury, this is a factor in whether a timely report of injury was made and does not alter the date of an occupational disease. However, we can affirm the operative finding of fact:

> A reasonable person in the same situation would not have known that the pain that she experienced in her wrist was caused by or the result of her performance of her job duties for the Employer after she ceased working for the Employer and the pain continued.

We believe that this finding of fact makes clear that the import of the hearing officer's other findings, although inartfully stated in terms of whether the claimant appreciated the "seriousness" of her injury, is that the claimant as a layperson did not appreciate that she had a work-related injury. We can affirm the date of injury and notice findings based upon sufficient support in the record. The hearing officer evidently credited the testimony of the claimant over an incidental observation by Dr. V that the claimant had been treated on December 16 and told she had a work-related injury.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, 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.).

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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge