APPEAL NO. 002331

Following a contested case hearing held on September 20, 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) sustained a compensable occupational disease injury; that the date of the injury was _____; that the appellant (carrier) is not relieved of liability for the claim under Section 409.002 because the claimant notified the employer of a work-related injury pursuant to Section 409.001; and that the claimant had disability from March 20 through May 8, 2000. The carrier has appealed, challenging the sufficiency of the evidence to support these determinations. The file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

The hearing officer's Decision and Order contains a detailed recitation of the evidence with which neither party takes issue. Accordingly, only such evidence as is necessary to explain our decision will be set out.

The claimant testified that he has been employed by the employer for years as a mechanic on an assembly line; that at the time of the injury, his job was to install the brake and exhaust systems on trucks; that the production rate varied from as high as 20 to as low as 7 trucks per shift; and that he used pneumatic tools and wrenches to perform the installations and did so repeatedly throughout his shifts. He stated that throughout 1999 he had pain and numbness in his hands and wrists; that he did not know the cause of these symptoms; that these symptoms became worse by November 1999; that early in November 1999 he saw Dr. W who diagnosed high blood pressure and who had previously diagnosed arthritis; that early in December 1999 he saw Dr. O about his hand complaints and was referred to Dr. P whom he first saw on _____; and that on _____, he again saw Dr. P who then informed him that he had carpal tunnel syndrome (CTS) and that the condition was caused by his work. The claimant said that on January 5, 2000, he told Mr. LC, a senior mechanic who had supervisory authority over the claimant, that he had CTS which was caused by working with the air tools. Mr. LC testified that this conversation occurred sometime in January 2000. The claimant also indicated that on _____, he also told Mr. KC, the safety manager; Mr. B, the assistant safety manager; Mr. R, a supervisor; and Mr. JC, another supervisor, about his having CTS and its having been caused by his work. However, those employees (except for Mr. B) testified that while the claimant did tell them about his CTS on some date they could not recall, he did not indicate that it was caused by his work but rather indicated that it was to be taken care of by his personal insurance. Mr. KC stated that he specifically asked the claimant if the CTS was work-related and that the claimant responded in the negative. The claimant, on the other hand, stated that Mr. KC told him that CTS was "personal" and that he, too, had undergone surgery for CTS.

The claimant further testified that he continued to work until March 20, 2000, when he underwent right wrist surgery and that he returned to working light duty on May 8, 2000. He also said that he practices roping and tying calves approximately twice a month and that he drives 38 miles to his place of employment. While the carrier commented on both of these activities, it did not assert that either of these activities was the sole cause of the claimant's CTS.

The claimant had the burden to prove that he sustained the claimed injury, that he provided the employer with timely notice of the injury, and that he had disability as that term is defined in Section 401.011(16). Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. This is no less true of the timely notice-of-injury issue. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd. n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd. n.r.e.).

Notwithstanding the conflicts and inconsistencies in the evidence, it was within the province of the hearing officer, as the fact finder, to conclude from all the evidence that the claimant did in fact sustain a compensable repetitive trauma injury, namely, bilateral CTS (Section 401.011(36)); that _____, was the date the claimant knew or should have known that the disease may be related to his employment (Section 408.007); that the claimant reported the injury to Mr. LC, his immediate supervisor, on January 5, 2000, a timely notification under Section 409.001; and that the claimant had disability from March 20 through May 8, 2000. The claimant contended that the date of injury was _____, while the carrier contended that the date of injury should be in late November or early December 1999 when the claimant's symptoms became sufficiently severe to cause him to seek medical treatment. As an appellate reviewing tribunal, however, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The Decision and Order is reformed to reflect that Claimant's Exhibit No. 11 is the recorded statement of Mr. LC, not of the claimant. We also disregard the following statement in the hearing officer's Statement of the Evidence: "However as Claimant did not establish that he had a compensable claim, based on failure to give notice within 30 days,

no temporary income benefits are due." This statement may have been inadvertently included and is clearly inconsistent with the factual findings and legal conclusions.

The Decision and Order of the hearing officer, as reformed, is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge