

APPEAL NO. 002381

Following a contested case hearing (CCH) held on September 5, 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 herein) sustained a compensable injury in the form of an occupational disease; that the date of injury was _____; that the claimant timely reported her injury to the employer; and that the claimant had disability beginning on March 17, 2000, continuing through the date of the CCH. The appellant (carrier herein) files a request for review contending that the evidence did not establish that the claimant sustained a compensable injury; that the evidence showed the claimant's date of injury was prior to _____; and that the claimant did not timely report her injury to her employer. The carrier argues that the claimant did not have disability because the evidence showed that the claimant did not have a compensable injury and that the carrier was relieved of liability because of the claimant's failure to timely report her injury. There is no response from the claimant to the carrier's request for review in the appeal file.

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 for the employer as a "plasma operator" for 23 years. The claimant testified that her duties required her to put tape on airplane parts with a teflon pencil and to place the parts in a spraying device to be painted. The claimant testified she began having pain in her right shoulder, neck, both wrists, and both hands. The claimant testified that she was initially diagnosed with arthritis. On _____, Dr. D diagnosed the claimant's condition as "carpal tunnel syndrome acute cervico brachial syndrome." On _____, the claimant reported a work-related injury to her employer. On May 25, 2000, the claimant underwent an EMG study which confirmed a diagnosis of bilateral carpal tunnel syndrome. The claimant testified that as a result of her injury she had been unable to work from March 17, 2000, through the date of the CCH.

Section 401.011(26) states that an injury means damage or harm to the physical structure of the body and that the term includes an occupational disease. Section 401.011(34) defines occupational disease to include repetitive trauma injuries. Section 408.007 provides that 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." The hearing officer determined that the claimant's date of injury for her occupational disease was _____, being the date she first knew that her occupational disease or condition was related to her employment. The carrier asserts that the hearing officer's date-of-injury determination is against the great weight of the evidence, contending that the claimant should have known much sooner that her problem was related to work. The date of injury under Section 408.007 is a question of fact for the hearing officer to resolve. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence,

the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Applying this standard, we find that the hearing officer's determination regarding the date of the injury was sufficiently supported by the evidence.

The hearing officer's resolution of the timely reporting issue was closely related to his resolution of the date of injury. 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. It was not disputed that the claimant reported her injury on _____. Given a date of injury of _____, her report of injury was clearly timely.

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. As stated previously, 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). In the present case, the hearing officer resolved the conflicts in the evidence, including the medical evidence, in finding an injury. Applying our standard of review, we do not find this was incorrect as a matter of law.

The carrier's attack on the hearing officer's finding of disability is predicated on its challenge to the hearing officer's resolution of the issues of injury and timely report of the injury. Having affirmed the hearing officer's findings of injury and timely report of the injury, we likewise reject the carrier's challenge to the hearing officer's disability finding.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Judy L. Stephens
Appeals Judge