

APPEAL NO. 002465

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 October 2, 2000. The issues at the CCH were injury, date of injury, timely report of injury, and disability. The hearing officer determined that the respondent (claimant herein) sustained a compensable injury in the form of an occupational disease; that the date of the injury is _____; that the claimant timely reported the injury; and that the claimant had disability beginning on January 26, 2000, and continuing through March 3, 2000, and beginning on March 9, 2000, and continuing through the date of the CCH. The appellant (carrier herein) files a request for review arguing that the hearing officer's decision was contrary to the evidence. 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 hearing officer summarized the evidence in her decision and we adopt her rendition of the evidence. The claimant testified that she worked as a clerk/typist for over two years and that 80% of her workday was comprised of data entry typing. The claimant testified that in September 1999 she had experienced pain in her hands and arms and that she had consulted with her family doctor who attributed these problems to a family history or arthritis and/or lupus. The claimant testified that she was given pain medication and returned to work. The claimant testified that her work level increased in January 2000 and that on _____, she experienced severe hand and arm pain bilaterally with numbness, tingling, and loss of feeling in her hands and fingers. The claimant returned to her doctor at that time as she could no longer tolerate the activity at work. The claimant testified that she was unable to work from _____, through March 3, 2000, and again beginning on March 9, 2000, through the date of the CCH. The claimant presented medical evidence from Dr. H, her treating doctor, and from Dr. W, the designated doctor, relating her physical problems to her work.

We first address the carrier's contention that there was insufficient evidence to support the hearing officer's finding of injury. 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. Section 410.165(a) provides that 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). 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Generally, corroboration of an injury is not required and may be found based upon a claimant's testimony alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). Here, there was certainly testimony from the claimant as well as medical evidence to support her claim of injury and, applying our standard of review, we find that this was sufficient to support the hearing officer's finding 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. The 1989 Act provides that a determination by the Texas Workers' Compensation Commission that good cause exists for failure to provide notice of injury to an employer in a timely manner or actual knowledge of the injury by the employer can relieve the claimant of the requirement to report the injury. Section 409.002. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). To be effective, notice of injury needs to inform the employer of the general nature of the injury and the fact it is job related (emphasis added). DeAnda v. Home Ins. Co., 618 S.W.2d 529, 533 (Tex. 1980). Thus, where the employer knew of a physical problem but was not informed it was job related, there was not notice of injury. Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied). Also, the actual-knowledge exception requires actual knowledge of an injury. Fairchild v. Insurance Company of North America, 610 S.W.2d 217, 220 (Tex. Civ. App.-Houston [1st Dist.] 1980, no writ). The burden is on the claimant to prove actual knowledge. Miller v. Texas Employers' Insurance Association, 488 S.W.2d 489 (Tex. Civ. App.-Beaumont 1972, writ ref'd n.r.e.).

In the present case, the claimant argues that she timely reported her injury on _____. She argues that her date of injury was _____, so she reported her injury within 30 days and good cause was not really an issue. Thus, the issue of timely notice really turns on the issue of the date of the claimant's injury, which the hearing officer found to be _____.

The hearing officer found that the claimant knew or should have known that her condition was work related on _____. Section 408.007 provides as follows:

For purposes of this subtitle, 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.

Under Section 401.011(34), an occupational disease includes repetitive trauma injuries, which is essentially what the claimant is alleging here. The date of an occupational disease is a question of fact. Texas Workers' Compensation Commission Appeal No. 94415, decided May 23, 1994. We stated in Texas Workers' Compensation Commission Appeal No. 992783, decided January 26, 2000, "[t]he date is somewhat of a 'moving target,' but need not be as early as the first symptoms nor as late as a definitive diagnosis." Applying our standard of review set out above, we find sufficient evidence to support the hearing officer's factual determination concerning the date of injury.

The carrier's argument that the claimant did not have disability is premised on its argument that the claimant did not provide sufficient evidence to establish a compensable injury. Having rejected the carrier's argument regarding injury, we likewise reject its argument concerning disability.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge