APPEAL NO. 002855

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 13, 2000, a hearing was held. The hearing officer decided that the appellant (claimant) had not sustained a compensable occupational disease injury in the form of bilateral carpal tunnel syndrome (CTS) on _____; that she did not timely report the injury of _____, to her employer and did not have good cause for failing to do so; and that she did not have disability resulting from the alleged bilateral CTS. The claimant appeals, asserting that the hearing officer's determinations are against the great weight of the evidence. The respondent (self-insured) responds that the hearing officer's decision is supported by the evidence and should be affirmed.

DECISION

Reversed and rendered in part; affirmed in part.

This case was consolidated for hearing with the case in Texas Workers' Compensation Commission Appeal No. 002829, decided January 11, 2001. In Appeal No. 002829, the claimant contended that her alleged bilateral CTS was a result of a motor vehicle accident on August 9, 1999, which occurred when the city bus she was driving was struck by a car. In this case, the claimant alleged an alternate theory of recovery, asserting that she developed bilateral CTS, with her right hand being worse than the left, when she returned to work on January 12, 2000, and drove a bus for eight days.

The claimant testified that she had been unable to work, due to her problems with her hands, from _____, through February 7, 2000; had been afforded light duty by the self-insured from February 8, 2000, through April 7, 2000; and that she had been unable to work, due to ineligibility for the self-insured's modified-duty program, from April 8, 2000, through the date of the hearing. That testimony was uncontroverted and was corroborated by a letter from the self-insured to the claimant which indicated that the claimant would no longer be eligible for the modified-duty program after April 7, 2000. The hearing officer's determination that the claimant was not unable to obtain and retain employment as a result of the claimed injury of _____, is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. We, therefore, reverse the hearing officer's finding of fact that the claimant was not unable to obtain and retain employment as a result of the claimed injury of _____, and render a new decision that the claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage as a result of the alleged injury of _____, beginning on _____, and continuing through February 7, 2000, and again beginning on April 8, 2000, and continuing through the date of the hearing.

The hearing officer did not err in determining that the claimant had not sustained a compensable CTS injury in the course and scope of her employment. The hearing officer

noted that Dr. J, a doctor selected by the self-insured for an independent medical examination, stated that the claimant did not have classic symptoms of CTS. It is further noted that Dr. W stated that although she believed that the claimant had CTS, that it was not likely that the CTS was a result of the claimant's work activities. There was a conflict in the evidence as to the existence and cause of the alleged CTS. 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 any witness's testimony. 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. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The hearing officer did not err in finding that the claimant did not report a work-related injury to her employer within 30 days of the date of the claimed injury and did not have good cause for failing to do so. 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). The evidence, including the claimant's testimony that she told her employer she was having problems with her hand but failed to tell her employer that the problems with her hand were related to her employment, supports the hearing officer's decision.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id*. Although we have reversed the hearing officer's finding that there was no inability to obtain and retain employment as a result of the claimed injury of _____, the claimant is not entitled to compensation for that injury because the injury was not proven to have been sustained in the course and scope of the claimant's employment and the claimant failed to give timely notice of the injury to her employer. The inability to obtain and retain employment was not a result of a compensable injury and does not constitute disability as that term is defined by statute. *Ibid*.

The hearing officer's decision that the claimant was not unable to obtain and retain employment at wages equivalent to her preinjury wage as a result of the claimed injury of _____, is reversed and a new decision that the claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage as a result of the alleged injury of _____, beginning on _____, and continuing through February 7, 2000, and again beginning on April 8, 2000, and continuing through the date of the hearing is rendered. The hearing officer's decision that the claimant did not sustain a compensable

injury on _____; that the claimant did not have disability resulting from the claimed injury of _____; and that the self-insured is relieved from liability in this matter due to the claimant's failure to timely notify her employer of the alleged injury within 30 days without good cause, and order that the self-insured is not liable for benefits for the alleged injury of _____, are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge