APPEAL NO. 010035

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 22, 2000. The hearing officer determined that the date of injury of the appellant's (claimant) repetitive trauma occupational disease was _____ (all dates are 1999 unless otherwise noted), and that the claimant did not timely report his injury to his employer and failed to have good cause for failing to do so.

The claimant appealed, contending that he did not associate his "bilateral wrist problems" with his job until November 2 and that he timely reported the injury after that date. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was an equipment installer for (employer). It is relatively undisputed that prior to September, the claimant had intermittent pain in his wrists; that on _____, while pulling cable, the pain became so bad that he made an appointment to see a doctor; and that he told his supervisor, TF, about the pain but not that he thought it was work-related. The claimant testified that his doctor told him in September that perhaps the pain was an infection or perhaps caused by the claimant's diabetes. The claimant saw his doctor two more times in October for his diabetes and then again on _____ when the claimant's doctor said he suspected carpal tunnel syndrome and referred the claimant for testing. Exactly when in November the claimant reported a work-related injury is disputed; however, the date of _____ or _____, when the doctor called the employer, is supported by the evidence. When the claimant was called in to fill out an injury report, the claimant gave _____ as the date of injury. Various medical reports also give _____ as the date of injury. The Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) completed by the claimant on February 2, 2000, lists _____ as the date of injury and _____ as the date the claimant first knew "that the occupational disease . . . may be related to [the] employment."

The hearing officer commented:

> On _____, Claimant had wrist pain as a result of running cables and identified _____, to his supervisor as the date he was injured. Although Claimant may have thought his problem might be related to his diabetes, he knew that his work was at least aggravating the wrist pains.

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 evidence was subject to differing interpretations. 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.). 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). Although another fact finder could have reached a different conclusion on the same evidence, that alone is not a basis on which to disturb the hearing officer's decision. Salazar, *et al.* v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kenneth A. Huchton
Appeals Judge