APPEAL NO. 010791

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 March 22, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury on _____ (the date he first knew, or should have known, that he might have an injury related to his employment), and, further, did not give timely notice of injury to his employer. The hearing officer held that the claimant had not made an election of remedies by filing his medical bills initially under his regular health insurance. Because there was no compensable injury, there was no disability.

The claimant has appealed the determinations against him on injury, notice, and disability. The claimant argues that there is no requirement to inform an employer that an injury may be related to work if he or she is unsure of the connection. The respondent (carrier) responds by reciting facts in favor of the decision.

DECISION

We affirm.

Section 401.011(36) defines repetitive trauma injury as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." To recover for an occupational disease of this type, one must not only prove that repetitious, physically traumatic activities occurred on the job, but also must prove that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally. Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.).

At a minimum, proof of a repetitive trauma injury should consist of some presentation of the nature, duration, frequency, and the work activities alleged to be traumatic. Texas Workers' Compensation Commission Appeal No. 960929, decided June 28, 1996.

We do not agree that the hearing officer erred in finding that the claimant did not sustain a repetitive trauma injury. These were matters of fact for the hearing officer to determine from the conflicting evidence presented. 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.). 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); American Motorists Insurance Co. v.

Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). Without a finding of injury, there can be no disability.

We likewise cannot agree that the hearing officer erred in finding that notice was not timely given to the employer. We disagree with the claimant's contention that a notice need not apprise the employer that an injury is related to or arises out of the employment.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

CONCUR IN THE RESULT:

Gary L. Kilgore
Appeals Judge