APPEAL NO. 012150
FILED OCTOBER 23, 2001

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 August 2, 2001. With respect to the issues, the hearing officer made the following determinations:

1. The date of the injury is _____, the date on which the respondent (claimant) knew or should have known that the disease may be related to her employment. Section 408.007.

2. The claimant sustained a compensable injury in the form of an occupational disease.

3. The claimant's notice to the employer was made on _____, and was timely within the meaning of Section 409.001. The appellant (carrier) was not relieved of liability because timely notice was given by the claimant. Section 409.002.

4. Due to the _____, injury, the claimant does have disability, which rendered her unable to obtain or retain employment at preinjury wages from February 5, 2001 through April 30, 2001.

The carrier has appealed these determinations on sufficiency of the evidence grounds. The claimant responded, arguing the carrier's appeal is untimely, and that the evidence is sufficient to support the hearing officer's determinations.

DECISION

Affirmed.

The claimant's first contention is that the carrier's appeal is untimely. In that regard, Section 410.202(a) of the Act provides that, "to appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Effective for an appeal in a workers' compensation proceeding filed on or after June 17, 2001, Section 410.202(d) provides that, "Saturdays and Sundays and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for an appeal under Subsection (a) or a response under Subsection (b) must be filed." Records of the Texas Workers' Compensation Commission (Commission) indicate that the carrier received the decision of the hearing officer on August 20, 2001, and was therefore required to file its appeal by September 12, 2001, for the appeal to be timely. The appeal was received by the Commission's Chief Clerk of Proceedings on September 11, 2001, as evidenced by the Commission's date stamp on the appeal. Thus,

the carrier timely filed its appeal. The assertion of untimeliness is without merit.

All of the issues in this case involved factual determinations for the hearing officer. 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). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. 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.

There is evidence in the record to show that the claimant was engaged in repetitive activity. Medical evidence supports the diagnosis of carpal tunnel syndrome (CTS). The claimant testified that she initially related her pain to a previous shoulder strain which affected her right arm, and was unaware of the CTS, or that it was a work-related injury, until she was so informed on _____, by the referral orthopedic surgeon after diagnostic studies were done. In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994.

An appeals-level body is not a fact finder, and it 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 could 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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge