

APPEAL NO. 012359
FILED NOVEMBER 13, 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 (CCH) was held on August 23, 2001. With respect to the issues before him, the hearing officer determined that the appellant/cross-respondent (claimant) did not sustain a compensable repetitive trauma injury. The hearing officer also found that the claimant "timely reported her injury to a supervisor," and that the alleged date of injury was _____.

The claimant appeals the compensability determination on sufficiency grounds, to which the respondent/cross-appellant (carrier) responds, urging affirmance on that issue.

The carrier appeals the date of injury and timely notice issues on sufficiency grounds, to which the claimant responds, urging affirmance on those issues.

DECISION

Affirmed.

Regarding the issue of the date of the alleged injury, the claimant alleges that she sustained a repetitive trauma occupational disease, carpal tunnel syndrome (CTS), because of her job duties. She testified, and the medical records bear out, that she first learned of her CTS when a neurologist to whom she was referred for a low back injury unexpectedly performed a nerve conduction study (EMG) on her upper extremities on _____. The medical records show that results of the EMG indicated that the claimant had CTS. The claimant testified that while she had had symptoms in her hands and wrists for about a year, she trivialized them and thought that, because of her advancing age, she was developing arthritis. She did not, she testified, attribute her symptoms to her work until the neurologist told her that she had CTS, probably as a result of her job. The carrier argued that the claimant knew or should have known that her symptoms may be work-related before _____, but presented no evidence in support of its argument. The record thus supports the hearing officer's determination that the date of injury was _____, and we affirm the hearing officer on that issue.

The parties stipulated in the record that December 22, 2000 was the date of employer's notice. In addition, the claimant testified that she had notified her employer "promptly" after _____. Thus, the hearing officer's determination that the carrier was not relieved of liability for this claim under Section 409.002, because the claimant did timely notify her employer within thirty days of her date of injury pursuant to Section 409.001 of the 1989 Act is supported by the evidence.

Further, there was sufficient evidence in the record to support the hearing officer's determination that the claimant did not sustain a compensable repetitive trauma injury on _____. The claimant testified that she had numbness and achiness in her hands

and wrists for about a year prior to _____. She said the symptoms were worse in the morning upon waking than in the evening before bed, and that she still had the symptoms almost a year beyond her having been to work.¹ The claimant also introduced medical records indicating that she was diagnosed with CTS on _____, and that the doctor thought it was work-related. There was contrary evidence from Dr. P, a neurologist who specializes in diseases of the hand. How much weight is given to the medical evidence is within the province of the hearing officer. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

There was conflicting evidence submitted on the disputed issues. 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 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Campos, supra. The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust.

¹The claimant had back surgery on December 15, 2000, and has not returned to work, which she left in November of 2000. Neither party addressed the reasons for the claimant's unemployment since that time. Disability was not at issue at the CCH and will not be addressed here. (TR. p. 11).

For the stated reasons, the hearing officer's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge