APPEAL NO. 020773
FILED MAY 22, 2002

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 March 7, 2002. With regard to the issues before him, the hearing officer found that the respondent (claimant herein) suffered a compensable injury in the form of bilateral carpal tunnel syndrome (CTS) on _____, and that the appellant (carrier herein) failed to timely dispute the compensability of the claimant's injury because its contest of compensability was not based upon newly discovered evidence. The carrier appeals, contending that there was insufficient evidence to support the hearing officer's finding of injury and that the hearing officer erred in finding that it failed to timely dispute the compensability of the claimant's injury. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant did not testify at the CCH. There were medical records in evidence from Dr. K, an orthopedic surgeon who treated the claimant, in which he opined that the claimant's CTS was related to her employment, where her duties included cutting hair. Dr. K states that barbering is a commonly associated occupation risk to CTS. Also in evidence is a report from (healthcare management company), which states there is no correlation between work activities and CTS. Dr. P, a carrier peer review doctor, testified telephonically that based upon his review of the claimant's medical records the claimant did not suffer from CTS.

We first consider the carrier's argument that there was not sufficient evidence to support the hearing officer's finding of injury. The carrier argues, without benefit of citation to authority, that the hearing officer could not have found an injury without testimony from the claimant. We find no merit in this argument. The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993. Section 410.165(a) provides that the contested case 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. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, there was medical evidence supporting the hearing officer's finding of injury. The carrier points to Dr. P's contrary opinion concerning injury. 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, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The carrier also complains that the hearing officer stated that he did not find Dr. P's opinion to be credible, but failed to give a reason for this. 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.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). 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). We find nothing untoward in the hearing officer giving more weight to the opinions of the doctors who actually examined the claimant than that of a doctor who formulated an opinion that the claimant did not have an injury merely from reviewing medical records which themselves indicated that the claimant did have an injury. In any case, applying our standard of review, we find no error in the hearing officer's finding that the claimant had a compensable injury.

Section 409.021(c) provides that if an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. Section 409.021(d) provides that an insurance carrier may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier. In the present case, the hearing officer found that the carrier failed to dispute the compensability of the claimant's injury within 60 days of being notified of it.

The carrier argues first that it did not have to dispute an injury pursuant to Section 409.021(c) because there was no compensable injury, citing Continental Casualty Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.) (hereinafter Williamson) in support of its argument. The carrier's reliance on Williamson is doubly misplaced. First, the hearing officer found an injury in the present case and we have affirmed this finding. Therefore, Williamson is clearly inapplicable. Secondly, we have regularly noted that Williamson applies in only the limited circumstance of where there is a determination that the claimant did not have damage or harm to the physical structure of the body, and does not apply to cases where the claimant did have injuries that the hearing officer determined not to be causally related to the claimant's employment. *See* Texas Workers' Compensation Commission Appeal No. 011735, decided September 5, 2001 (and citations therein). Thus, were we to accept the argument of the carrier, which we have in fact rejected, that the claimant failed to prove a causal relationship between her work and her CTS, Williamson would not preclude the hearing officer's finding that the carrier waived its right to contest compensability in this case.

The carrier does argue that even if it waived compensability that it should be allowed to reopen the issue because of newly discovered evidence. The carrier points to a nerve conduction report dated July 16, 2001, as constituting such newly discovered evidence. The hearing officer outlines in detail in his decision his rationale for rejecting this argument. A major point in his analysis is that this report itself supports the claimant's assertion of bilateral CTS, and the hearing officer fails to be persuaded that a report supporting the claimant's injury would constitute newly discovered evidence to justify the carrier's disputing the injury. We find no error in the hearing officer's finding that the nerve conduction study did not constitute newly discovered evidence.

The decision and order of the hearing officer are affirmed.

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

NICHOLAS PETERS
12801 NORTH CENTRAL EXPRESSWAY, SUITE 100
DALLAS, TEXAS 75243-1732.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Michael B. McShane
Appeals Judge