APPEAL NO. 021670
FILED AUGUST 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 June 3, 2002. The hearing officer resolved the issues in dispute by determining that the respondent (claimant) sustained a compensable repetitive injury to her low back, with a date of injury of _____,[1] and that she had disability from _____, through June 3, 2002, the date of the CCH. The appellant (carrier) appealed the determinations of the hearing officer on sufficiency grounds, seeking reversal. There was no response from the claimant.

DECISION

Affirmed, as reformed

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Injury means damage or harm to the physical structure of the body and such diseases or infections as naturally resulting therefrom, or the incitement, acceleration, or aggravation of any disease, or infirmity or condition, previously or subsequently existing, by reason of such damage or harm. Gill v. Transamerica Ins. Co., 417 S.W.2d 720 (Tex. Civ App.-Dallas 1967, no writ): *see also* McCartney v. Aetna Casualty & Surety Co., 362 S.W.2d 838, 839 (Tex. 1962); Matson v. Texas Employer's Insurance Ass'n, 331 S.W.2d 907, 908 (Tex. 1960).

The claimant testified that her low back symptoms became increasingly worse after her workstation was changed, causing her to move back and forth to two different computers and enter data all day. The medical reports show that a doctor diagnosed the claimant with lumbar problems at L4-5 and L5-S1 and the MRI reports confirmed the diagnosis. The claimant testified that only her work could have caused these problems. The carrier argued that the claimant failed to prove her job was repetitive and traumatic, and that she had a preexisting lumbar problem at L5-S1. The hearing officer reviewed the MRIs and became convinced that the claimant sustained further bodily harm as a result of her work.

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. 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.

[1] In his Finding of Fact the hearing officer finds _____, as the date of injury. However, his Conclusion of Law states the date of injury is _____. This is obviously a typographical error and we reform it to read _____.

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 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). 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). Applying this standard, we find no error in the hearing officer's finding of injury.

The date of injury is also a question of fact. Texas Workers' Compensation Commission Appeal No. 94534, decided June 13, 1994. Section 401.011(34) defines occupational disease as including repetitive trauma injuries. The date of injury for an occupational disease is the date the employee knew or should have known that the disease may be related to the employment. Section 408.007. Applying the standard of review discussed above, we find sufficient evidence to support the hearing officer's finding that the date of injury was _____.

The two treating doctors' records support the hearing officer's decision that the claimant had disability from _____, through the date of the CCH. Because the hearing officer found that the claimant was unable to obtain or retain employment at her preinjury wages as a result of her compensable injury during this period, the hearing officer did not err in determining that the claimant had disability from _____, to June 3, 2002. *See* Section 401.011(16).

The hearing officer's decision and order are affirmed as reformed.

The official name of the carrier is **COMMERCE & INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Robert W. Potts
Appeals Judge