APPEAL NO. 022508
FILED NOVEMBER 20, 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 was held on September 5, 2002. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable, repetitive trauma injury on _____, and had disability on February 14, 2002, and from March 13 through April 8, 2002. The hearing officer further determined that the appellant (carrier) was not relieved of liability pursuant to Section 409.002 because the claimant did timely notify his employer of the injury under Section 409.001. In its appeal, the carrier argues that the evidence was not sufficient to support the hearing officer's determinations. There was no response on file from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable, repetitive trauma injury (left side carpal tunnel syndrome (CTS)) on _____. The claimant testified that in his job as a dispatcher, he developed numbness and tingling in his left hand and wrist that grew progressively worse. The claimant testified that he used the telephone and entered data on a computer for 10 hours daily, 5 days a week. For a repetitive trauma injury (occupational disease), Section 408.007 defines the date of injury as "the date on which the employee knew or should have known that the disease may be related to the employment." The carrier argued that the claimant's date of injury should have been in November 2001, at the very latest, as that was when the severity of the symptoms brought the claimant to contact a doctor. The carrier supported its argument with the claimant's testimony that he began having symptoms in June 2001, and so had considerable time to determine their origin. The claimant's treating doctor diagnosed the claimant's CTS, and told the claimant it was the result of his work-related duties, on _____. The claimant testified that, despite having had the symptoms since June 2001, he did not know that his CTS was related to his employment until his doctor told him so. The hearing officer's determination on the date of injury is supported by sufficient evidence.

The hearing officer did not err in determining that the claimant timely notified his employer of his injury. The claimant's testimony was unclear as to when he orally notified his employer, but the documents in the record show that the claimant notified the employer by at least February 6, 2002, which was within 30 days of _____, the date upon which the hearing officer determined that the claimant knew or should have known that his injury may be work-related.

The hearing officer did not err in determining that the claimant had disability as a result of his compensable CTS on February 14, 2002, and from March 13 through April

8, 2002, as the hearing officer found that the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage on those dates. *See* Section 401.011(16).

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, 702 (Tex. Civ. App.-Amarillo 1974, 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). We do not find so here.

The decision and order of the hearing officer are affirmed.

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

HAROLD FISHER, PRESIDENT
3420 EXECUTIVE CENTER DRIVE, SUITE 200
AUSTIN, TEXAS 78731.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Michael B. McShane
Appeals Judge
Manager/Judge

_____
Robert W. Potts
Appeals Judge