APPEAL NO. 022957
FILED JANUARY 9, 2003

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 October 24, 2002. With respect to the issues before him, the hearing officer determined that the appellant (claimant) proved that she sustained a repetitive trauma injury, in the form of right lateral epicondylitis, in the course and scope of her employment, and that she was unable to obtain and retain employment at her preinjury wage. However, because the hearing officer determined that the date of injury was _____, that the claimant reported her injury to her employer no earlier than May 20, 2002, and that the claimant did not have good cause or other legal excuse for failing to timely report her injury to her employer, he also determined that the claimant's injury was not compensable and that she had no disability. The claimant appealed the determinations regarding the date of injury and timely reporting on sufficiency basis, and the respondent (carrier) responded, urging that the hearing officer be affirmed. Neither party appealed the hearing officer's findings regarding course and scope or the claimant's inability to obtain and retain employment at her preinjury wage because of her injury; therefore, those determinations have become final pursuant to Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's date of injury was _____. With a repetitive trauma-type injury, the date of injury is that date when the claimant knew or should have known that her injury may be related to her employment. *See* Section 408.007. The claimant testified that when she first sought medical treatment for the symptoms in her right elbow, the physician's assistant told her that she had right lateral epicondylitis and that it was caused by repetitive activities. The claimant further testified that she did nothing else which could have caused this injury. The claimant's contention that her date of injury was that date when she was told she could file a workers' compensation claim, May 20, 2002, is not supported by the evidence. Similarly, since neither party seems to dispute that the claimant reported her injury to her employer sometime in May (though the hearing officer finds it was no earlier than May 20, 2002), the claimant's injury is not compensable and the hearing officer did not err in determining same.

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 **AMERICAN HOME ASSURANCE 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.

_____
Terri Kay Oliver
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Chris Cowan
Appeals Judge