APPEAL NO. 031347
FILED JULY 16, 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 (CCH) was held on February 19, 2003, and continued with the record closing on April 11, 2003. The hearing officer resolved the disputed issues by deciding that the respondent/cross-appellant (claimant) did not sustain a repetitive trauma injury to the cervical spine or the right upper extremity; that the claimant did sustain a repetitive trauma injury to the left upper extremity; and that the claimant does not have disability as a result of the compensable injury. The appellant/cross-respondent (carrier) appealed the hearing officer's repetitive trauma injury to the left upper extremity determination on sufficiency of the evidence grounds, and asserted that the hearing officer abused his discretion in denying the carrier's motion to add two issues at the CCH. The claimant filed an untimely cross-appeal, requesting review of the determinations that were unfavorable to her. The carrier responded to the claimant's cross-appeal and urged affirmance.

DECISION

Affirmed.

We first address the claimant's cross-appeal. A written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code. Section 410.202(a) and (d). Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Commission records indicate that the hearing officer's decision was mailed to the claimant on May 5, 2003. Under Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed; in this case deemed receipt is May 10, 2003. Although the claimant asserts in her cross-appeal that she did not receive the decision until May 14, 2003, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. *See* Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. Accordingly, the last date for the claimant to timely file an appeal was June 2, 2003. The appeal was postmarked on June 3, 2003, and is stamped as received by the Commission's Chief Clerk of Proceedings on June 9, 2003. The claimant's cross-appeal is, therefore, untimely.

The carrier asserts on appeal that the hearing officer erred in denying the carrier's request to add two issues at the CCH. Section 410.151(b) provides, in part, that an issue not raised at a benefit review conference (BRC) may not be considered unless the parties consent or, if the issue was not raised, the Commission determines that good cause exists for not requesting the issue at the BRC. Rule 142.7 provides that additional issues may be added by a party responding to the BRC report no later than 20 days after receiving it, by unanimous consent in writing no later than 10 days before the hearing, and on the request of a party if the hearing officer finds good cause. The hearing officer determined that the carrier did not establish good cause for adding the requested issues. We perceive no abuse of discretion on the part of the hearing officer denying the motion to add the additional issue. Downer v. Aquamarine Operations, Inc., 701 S.W.2d 238 (Tex. 1985); Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

An occupational disease includes a repetitive trauma injury. Section 401.011(34). The claimant contended that she sustained a repetitive trauma injury from performing her work activities for the employer. The claimant had the burden to prove that she sustained a repetitive trauma injury as defined by Section 401.011(36). Conflicting evidence was presented on the disputed issues of whether the claimant sustained a compensable injury in the form of an occupational disease and whether she had disability. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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 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). The hearing officer was persuaded by the evidence presented that the "claimant's early physical examinations included positive tests to the left wrist which were consistent with carpal tunnel [syndrome] or cubital tunnel syndrome" and that she had a ganglion cyst on her left wrist. The hearing officer determined that the claimant sustained a repetitive trauma injury to the left upper extremity. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Thus, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Additionally, the carrier asserts that the hearing officer failed to comment on "a number of employment issues" in determining the disputed issues. The Appeals Panel stated that the 1989 Act does not require that the Decision and Order of the hearing officer include a statement of the evidence and that omitting some of the evidence from a statement of the evidence did not result in error. Texas Workers' Compensation Commission Appeal No. 000138, decided March 8, 2000, citing Texas Workers'

Compensation Commission Appeal No. 94121, decided March 11, 1994. The failure to summarize all of the evidence in the Decision and Order does not indicate reversible error. We find no merit in the carrier's contention that the hearing officer did not take into account all of the evidence presented at the CCH. We conclude that the determinations are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra.*

The hearing officer's decision and order are affirmed.

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

ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.

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Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

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Margaret L. Turner
Appeals Judge

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Edward Vilano
Appeals Judge