

APPEAL NO. 040712
FILED MAY 24, 2004

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 9, 2004. The hearing officer determined that the respondent (claimant herein) sustained a compensable repetitive trauma injury with a date of injury of _____. The hearing officer further determined that the appellant (carrier herein) is not relieved from liability under Section 409.002 because the claimant timely notified his employer of the claimed injury pursuant to Section 409.001. Finally, the hearing officer concluded that the claimant had disability beginning on February 24, 2003, and continuing through the date of the CCH. The carrier appealed the above determinations on sufficiency of the evidence grounds. 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.

INJURY

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. 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 to 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). 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). In light of the conflicting evidence concerning injury in the record,

and applying this standard, we cannot say that the hearing officer erred as a matter of law in finding a repetitive trauma injury.

TIMELY REPORT OF INJURY

The 1989 Act generally requires that an injured employee or a person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. The 1989 Act provides that a determination by the Texas Workers' Compensation Commission that good cause exists for failure to provide notice of injury to an employer in a timely manner or actual knowledge of the injury by the employer can relieve the claimant of the requirement to timely report the injury. Section 409.002. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ).

In the present case, the issue of timely notice really turns on weighing conflicting evidence. The claimant testified that he reported an injury to his supervisor on the date of the injury and the president of the employer testified that the employer did not receive notice of injury until months after the date of the injury. The hearing officer was persuaded by the claimant's testimony and evidence and found that the claimant timely reported his injury to the employer on _____. It was the province of the hearing officer to resolve the conflicting evidence, and applying the standard of review discussed above, we affirm the hearing officer's determination that the claimant timely reported his injury.

DISABILITY

Disability is also a question of fact. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. There was conflicting evidence regarding disability and it was the province of the hearing officer to resolve these conflicts. We perceive no legal error in the hearing officer's resolution of the disability issue.

The decision and order of the hearing officer are affirmed.

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

**C. J. FIELDS
5910 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75206.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge