APPEAL NO. 950350

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 23, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) did not sustain a compensable occupational disease on (date of injury), did not timely report an occupational disease to her employer with no good cause shown therefor, and does not have disability. Claimant was found not to have made an election of remedies that would bar her from workers' compensation benefits if the facts showed that such were due; respondent (carrier) did not appeal this point. Appellant asserts that the evidence shows that she has a job-related repetitious physical injury, myofascial pain syndrome. She states that she reported a work-related injury within a week of returning to work on September 26th, after having been told on (date), that she had a work-related injury. Carrier replies that the decision of the hearing officer should be upheld.

DECISION

We affirm.

Claimant worked as a software engineer for (employer) since 1989; her work entailed significant time spent at a computer. In May 1994, using an employer's form, claimant filed a "report of accident" specifying that in (month year) she had an "accumulation of strain injury," detailing colon inflammation, neck and shoulder pain, and shortness of breath.

According to medical records in evidence, (Dr. S) had diagnosed and treated claimant for Crohn's disease at least since 1988. Claimant's appeal disagrees with the determination that she did not have a compensable injury but it does not address the Crohn's disease, although at the hearing she testified that pressure at work had aggravated it. Dr. S's numerous records do not refer to work at all in relation to Crohn's disease except for one question claimant asked regarding whether her shoulder pain could be tied to Crohn's disease; considering her appeal to include that disease, we find the evidence was sufficient to support that no injury, in the form of aggravation of her Crohn's disease, was found.

Claimant testified that her work area was too cramped and her computer too high for her use, especially because of the long hours she spent at it each day. She testified, and asserts in her appeal, that she complained of the height of the computer to (Mr. L) before (date of injury), the date she said she knew the work caused her neck and shoulder pain. Both in her testimony and the appeal, it is reasonable to interpret this complaint claimant alludes to as being to the work environment rather than to any work-related pain or injury she was having. As such, her testimony may be accepted as true and still not constitute notice of injury. She also said that she complained on many occasions to her supervisor, (Mr. Sr), about her neck and shoulder, but Mr. Sr testified that he was not told of any work injury until seeing a copy of claimant's notice of accident in May 1994.

Claimant agreed with the issues framed at the hearing which included whether she was injured on (date of injury) (when she knew that her injury may be related to her work). Her testimony indicated that this was the day she went into the hospital for neck and shoulder pain, and she also referred to (date), just before her release from the hospital when her doctor, (Dr. B), had the results of tests performed while she was in the hospital. Dr. B, in a statement dated June 28, 1994, states that claimant's neck and shoulder pain is due to myofascial pain syndrome which was caused by her work. He adds that myofascial pain syndrome results from "months to years performing the same repetitive muscular activity." Claimant also testified that after spending seven days in the hospital in (month year), she then was off work for 10 more days before returning to work. Claimant's appeal recites her return to work on September 26, 1993, which is consistent with her testimony of seven days in the hospital followed by 10 days at home.

Claimant testified and states in her appeal that she told the personnel representative for employer within the first week she was back at work that she had a work-related injury. (Ms. M) testified that claimant did talk to her but not until October 20, 1993. Ms. M produced her own handwritten notes of the meeting, dated October 20th, at the hearing, and they were admitted. They show two pages of notes addressing hours worked, pay, a performance evaluation, availability of others to assist her, and four lines that said:

> 3 weeks ago she went into the hospital
> Stress related illness in hospital for 8 days
> muscle spasms in neck/body?
> she reports 50 hrs per week but works 60/wk

(Dr. P) examined claimant on December 12, 1994, on behalf of the carrier. He states that claimant gave a history of neck and shoulder pain since 1992. He performed a physical examination and concluded that there was no evidence of a work injury. He also commented that claimant was "diagnosed as having Crohn's disease in 1993." As stated earlier, Dr. S's records show this diagnosis at least as early as 1988. Apparently Dr. P had only limited medical records to review.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. Ms. M testified that she did not interpret claimant's discussion with her on October 20, 1993, as giving notice of a work-related injury. She and all others who testified for carrier, including Mr. Sr, indicated that their first notice of a work injury was in May 1994 when claimant prepared the written notice. Even if the October 20th meeting constituted notice of a work injury, it still was over 30 days since the latest date claimant mentioned, (date), as having knowledge of a work-related injury. The evidence sufficiently supports the finding of fact and conclusion of law that claimant did not give timely notice of a work-related injury. With no evidence that claimant, in the period of (month year) to May 1994, considered the injury to be trivial, or of any other possible basis for good cause to delay notice, the evidence also sufficiently supported the determination that claimant did not show good cause for her delay in giving notice.

While Dr. B's opinion could have been given significant weight in support of a determination that claimant had shown a compensable injury to her shoulder and neck, Dr. P's opinion to the contrary could also be considered as more accurate. Dr. S did not really address claimant's problems other than Crohn's disease, although he commented in answer to claimant's question on August 17, 1993, that her shoulder problem probably was from strain at work. His comment referenced no testing or other basis for that conclusion and, if credited, would also raise a question that claimant's date of injury occurred several weeks earlier than otherwise stated, making adherence to notice requirements even more questionable. The hearing officer as fact finder is responsible for weighing medical evidence. *See* Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975), which allowed the fact finder to believe medical evidence of one party "was erroneous" while basing its decision on contrary medical opinion, even though the doctor, who was believed, could not explain the process on which he based his opinion. In so doing, the hearing officer may even believe one medical opinion when it is opposed by many medical opinions to the contrary. *See* Charter Oak Fire Ins. Co. v. Levine, 736 S.W.2d 931 (Tex. App.-Beaumont 1987, writ ref'd n.r.e.). The evidence sufficiently supported the determination that claimant did not show she was injured while working for the employer.

With the hearing officer's determinations of no compensable injury and failure to comply with notice requirements, the determination of no disability follows since disability under the 1989 Act must be based on a compensable injury. *See* Section 401.011(16).

The decision and order of the hearing officer set forth at the conclusion of his opinion are sufficiently supported by the evidence and are affirmed. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge