APPEAL NO. 981863

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 July 16, 1998. The issues at the CCH were injury, timely report of injury, and disability. The hearing officer determined that the respondent (claimant herein) suffered a compensable injury on _____; that the claimant timely reported the injury to her employer; and that the claimant had disability from _____, continuing through the date of the CCH. The appellant (carrier herein) files a request for review arguing that the hearing officer's determinations were not sufficiently supported by the evidence. The claimant responds that there was sufficient evidence to support the findings and the decision of the hearing officer.

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.

The claimant testified that she was injured when she slipped and fell at work on _____, while working as a maid at a motel. The claimant testified that she reported this fall and the fact that she injured her back to her supervisor the same day. The supervisor in a statement in evidence says that the claimant told him her back was hurting but not that she fell. The claimant testified that she was unable to work after her injury and sought medical treatment. There is medical evidence supporting the claimant's injury. The carrier put into evidence a report from Dr. L stating that based upon her review of the claimant's medical records it appeared to her that the claimant's complaints were not related to an injury but to aging and numerous trips and falls over the years.

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 contested case 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). 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).

A finding of injury may be based upon the testimony of the claimant alone. Houston Independent School District v. Harrison, 744 S.W.2d 289, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present case the hearing officer found an injury. This finding was supported by both the testimony of the claimant and medical evidence. The carrier contends that other evidence constitutes the overwhelming evidence contrary to this evidence of injury. The carrier points to evidence that the claimant suffered prior falls and back problems, the report it submitted from Dr. L stating that based upon her review of the medical records that the claimant's back problems were preexisting or part of the aging process, and its assertion that the claimant did not initially indicate to the doctors she consulted that she suffered an injury from slipping and falling at work but merely complained of having mopped and made beds at work. The only way claimant's prior problems would defeat an injury would be if the carrier could prove that these prior problems were the sole cause of the claimant's back condition. There was no mention of sole cause in the stated issues, but the hearing officer did make a finding that there was insufficient evidence to show that any prior injury was the sole cause of the claimant's current condition. In light of the fact that Dr. L never examined the claimant but based her opinion on a records review, we cannot fault the hearing officer for apparently giving little weight to her testimony. Finally, we note that in later medical history the claimant states she slipped and fell down. We do not find that the overwhelming evidence was contrary to the hearing officer's finding of injury.

The 1989 Act generally requires that an injured employee or 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 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). To be effective, notice of injury needs to inform the employer of the general nature of the injury and the fact it is job related (emphasis added). DeAnda v. Home Ins. Co., 618 S.W.2d 529, 533 (Tex. 1980). Thus, where the employer knew of a physical problem but was not informed it was job related, there was not notice of injury. Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied). Also, the actual knowledge exception requires actual knowledge of an injury. Fairchild v. Insurance

Company of North America, 610 S.W.2d 217, 220 (Tex. Civ. App.-Houston [1st Dist.] 1980, no writ). The burden is on the claimant to prove actual knowledge. Miller v. Texas Employers' Insurance Association, 488 S.W.2d 489 (Tex. Civ. App.-Beaumont 1972, writ ref'd n.r.e.).

In the present case, the hearing officer found as a matter of fact that the claimant did report her injury on the date that it happened. The supervisor to whom she testified she reported her injury stated that she only told him that her back hurt and not that she suffered an injury. Clearly, there was conflicting evidence as to whether the claimant reported an injury. The hearing officer chose to give greater weight to the testimony of the claimant that she reported the injury than to the statement of the supervisor. This was within her province as fact finder to resolve conflicts in the evidence and we find no error in her doing so.

The carrier's attack upon the hearing officer's disability determination is predicated upon its contention that the claimant did not suffer a compensable injury. Having found no error in the finding of injury, we likewise find no error in the finding of disability.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge