

APPEAL NOS. 000340
AND 000614

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 commenced on October 29, 1999, and was concluded on January 13, 2000. With regard to docket number (docket 1), the hearing officer has determined that appellant's (claimant) date of injury was _____; that claimant did not sustain a compensable injury in the form of an occupational disease on _____, or _____, or any other relevant date; that claimant failed to give timely notice of her claimed injury to her employer; and that claimant did not have disability. With regard to docket number (docket 2), the hearing officer has determined that claimant did not sustain a compensable injury on _____, or on any other relevant date and did not have disability. With regard to both dockets, respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001.

The hearing officer commented that both docket numbers were heard at the same time in a single hearing and, although only one decision was prepared for both dockets, the issues and hearing officer's findings were separate and distinct for each of the claimed injuries.

Claimant appealed many of the findings of fact and conclusions of law, emphasizing her version of disputed factual issues and explaining adverse findings. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Carrier responds, urging affirmance.

DECISION

Affirmed.

Claimant was employed as an apprentice electrician by an electrical contractor (employer). Involved in this case are two claimed injuries; one being a bilateral wrist injury (referred to by the hearing officer as docket 1), where the hearing officer found the date of injury to be _____; and the other being a right knee injury claimant allegedly sustained on _____, while working with (TC) in an attic (docket 2).

Regarding the bilateral wrist injury, claimant testified regarding her duties cutting, twisting and pulling wire, twisting caps and generally performing electrician functions. Claimant testified that on _____, she realized that she had sustained a work-related injury to both wrists. In a transcribed statement taken on October 28, 1998, claimant testified her hand problem involved "excruciating pain" and that she could not "hold on to anything." Claimant, in that statement, said she first noticed those problems "back in probably May and June [1998]." In another statement taken on November 3, 1998, claimant said that she related these hand problems to her employment "back in, in uh, May

or June [1998]. I mean that's when I actually knew that my employment was killing my hands." Based on that comment, the hearing officer determined the date of injury pursuant to Section 408.007 to be _____. At the CCH and on appeal, claimant contends her hands were hurting in May and June "but I did not know the injury was job related until much later." Statements from (RC), employer's production manager, and TC, an electrician in a supervisory position, deny any knowledge of claimant's arms or wrists hurting. DE, another of the employer's supervisors and claimant's brother-in-law, testified that on occasions in the summer of 1998 he would have had a supervisory position over a project on which claimant was working but that he had no knowledge of either claimant's wrist injury or right knee injury (docket 2). Claimant, in her November 3, 1998, statement said that she reported her wrist injury to the "employer" on "Friday October 23rd [1998]." A report from Dr. G dated December 19, 1998, noted complaints of bilateral wrist pain and that the "patient states she has a repetitive injury from using hand tools over a prolonged period of time with onset of wrist pain on 10/26/98." Claimant had right carpal tunnel release surgery on January 5, 1999, and left carpal tunnel release surgery on February 9, 1999.

Regarding the right knee injury (docket 2), claimant testified that on _____, she was working with TC in the attic of a house and, while climbing down a folding stairway, the hinge broke and she fell, sustaining a right knee injury. Claimant testified that TC also fell on that broken ladder. Claimant said that she reported her injury to RC as soon as they returned to the employer's premises and that RC asked if she wanted to see a doctor and that she had said "no." TC's statement agrees that there was a broken stair incident on _____, and that he sprained his ankle, but that claimant had not fallen and had not sustained an injury. Claimant left the employer's employment on August 31, 1998, because the apprentice program had ended. Claimant subsequently went to work for another employer but left that job on October 16, 1998. Claimant said she sought medical treatment for her knee at the (clinic) on October 26, 1998. An Initial Medical Report (TWCC-61) of that date notes it is the initial visit; that "she fell from a ladder," hitting her right knee; and that "she landed on both hands." The tentative diagnosis included a right knee contusion and strain, bilateral carpal tunnel syndrome (CTS), and back, bilateral wrist, right shoulder and right foot strains.

In evidence is an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated October 23, 1998, indicating an "_____" date of injury, when she "Fell from Broken Attic Ladder" sustaining injuries to the right knee and both wrists ("[CTS] Right & Left"). Also in evidence is a second TWCC-41, dated October 28, 1998, showing an _____, date of injury, claiming a CTS injury due to "Repetitive Motion." (Claimant testified that carrier's adjuster told her to use the _____ date because that is the date she was seen at the clinic and diagnosed with CTS.) A third TWCC-41, dated May 13, 1999, lists an _____, date of injury for a repetitive motion injury—no body part is named. Another TWCC-41, dated June 17, 1999, lists a date of injury of _____, for a repetitive motion injury to both wrists and states that the date claimant first knew that the occupational disease may be related to her employment was "[l]ate July 98."

The evidence was clearly in conflict, not only between claimant's testimony and the testimony of DE and statements of RC and TC, but was also internally inconsistent between her testimony and various transcribed statements and documents that claimant filed. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. 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 we will 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 Company, 715 S.W.2d 629, 635 (Tex. 1986).

We find that the decision of the hearing officer is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be manifestly unjust or clearly wrong. Cain, supra. Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge