

APPEAL NOS. 000922
AND 000939

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing (CCH) was held on April 4, 2000. The hearing officer issued separate decisions and orders and the appellant (carrier) has filed separate appeals, on both the claimant's alleged _____, and _____, injuries (Texas Workers' Compensation Commission Appeal Nos. 000922 and 000939, respectively). In regard to the alleged _____, injury, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the carrier is not relieved from liability under Section 409.002 because of any failure by the claimant to timely notify the employer of an injury pursuant to Section 409.001. In regard to the alleged injury of _____, the hearing officer determined that the claimant sustained a compensable injury on _____; that the carrier is not relieved from liability under Section 409.002 because of any failure by the claimant to timely notify the employer of an injury pursuant to Section 409.001; and that the claimant had disability from April 10 through April 13, 1999; from May 12 through May 17, 1999; and from June 6, 1999, through the date of the CCH. The carrier appeals the decisions and orders of the hearing officer on sufficiency grounds. The claimant replies that the hearing officer's decisions and orders are supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant worked as a store manager for an oil change business owned by Mr. B. The claimant testified that her job duties included performing work on cars. The claimant testified that on _____, she was asked to assist an employee to change an air filter which was difficult to remove and as she attempted to loosen a screw with a screwdriver, she felt a "pop" in her right wrist and her right hand went numb. The claimant testified that on February 2 or 3, 1999, she told her manager, Mr. C, that she had hurt her hand using it in a certain motion to loosen the filter and asked him if she was performing the motion incorrectly. The claimant sought medical treatment on January 29, 1999, for right hand numbness and tingling and thereafter continued working her regular job duties.

The claimant admitted that she had been diagnosed with palindromic arthritis, or polyarthralgia, in 1989, but was told that the condition was a possible side effect of seizure medication. According to the claimant, she suffered symptoms from the condition once every three to six months which resulted in pain, swelling, and redness in different areas of the body and in her trigger fingers, which resolved within three days. The claimant testified that the pain she sustained after the incident on _____, was different than any pain she had previously experienced.

On Friday, _____, a vehicle caught on fire inside the employer's business. The claimant testified that after the fire was extinguished, she was carrying a fire extinguisher down a flight of stairs; her foot got caught in a shirt; and she tripped and fell, landing on her left knee and right hand. The claimant said that later that day, when Mr. C came to the location, she told him that she had fallen down the stairs in the "pit" and had hurt her knee and wrist. According to the claimant, she was limping and her pants were torn at the knee. The claimant sought medical treatment on Monday, April 12, 1999. The medical records indicate that the claimant gave a history of falling down stairs and hitting her knee, and of swelling, and pain with ambulation. The claimant testified that she was taken off work for a few days, faxed her off-work slip to Mr. C, and did not think that her injury was serious. The claimant said that she discussed her injury with Mr. B and told him that she was not going to file for workers' compensation.

The claimant continued to seek medical treatment for her left knee and right wrist and was taken off work on May 12, 1999. The claimant testified that she quit employment on June 5, 1999, because of her medical condition and the physical demands of the job. The claimant's medical condition did not improve and on June 10, 1999, she was examined by a rheumatologist. Following an MRI of the left knee and right wrist on June 27, 1999, the claimant was diagnosed with a torn anterior cruciate ligament of the left knee and a triangular fibrocartilage injury of the right wrist, with symptoms of carpal tunnel syndrome. The claimant testified that after she learned of the severity of the injury and that she would need surgery, she decided to file a workers' compensation claim and informed the employer. The claimant had left knee surgery performed on August 31, 1999, and testified that she has not been released to return to work.

The claimant had the burden to prove by a preponderance of the evidence that she sustained an injury in the course and scope of employment. Whether she did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. 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). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). He resolved contradictions in the evidence for the claimant and concluded that claimant did sustain an injury to her right wrist on _____. He also concluded that the claimant sustained an injury to her left knee and right wrist on _____. 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 there was sufficient evidence to support the determinations of the hearing officer that the claimant sustained compensable injuries on _____, and _____.

Section 409.001 requires that an employee notify the employer of an injury not later than the 30th day after which the injury occurs. Failure to do so, absent a showing of good cause or actual knowledge of the injury by the employer, relieves the carrier and employer of liability for the payment of benefits for the injury. Section 409.002. The testimony of the claimant that she reported the _____, injury to Mr. C on February 2 or 3, 1999, and that she reported the injury of _____, to Mr. C on _____, is in direct conflict with Mr. C's statement. Whether, and, if so, when, notice is given is a question of fact for the hearing officer to decide. We find there was sufficient evidence to support the determination of the hearing officer that the claimant did timely report the injuries of _____, and _____.

The carrier's contention that the claimant did not have disability is based on the contention that the claimant did not sustain a compensable injury on _____. Since we find the evidence sufficient to support the determination of the hearing officer that the claimant sustained compensable injuries, we also affirm the determination that the claimant had disability from April 10 through April 13, 1999; from May 12 through May 17, 1999; and from June 6, 1999, through the date of the CCH.

The decision and order of the hearing officer in both cases are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge