APPEAL NO. 020586
FILED MAY 6, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case is back before us after our remand in Texas Workers' Compensation Commission Appeal No. 012707, decided December 20, 2001. We had remanded the case for the hearing officer to find a date of injury because in his original decision he had found an injury but had not awarded benefits because he did not think the date of injury mentioned in the injury issue was the correct date of injury. On remand, the hearing officer solicited written argument from both parties. After receiving written argument, the hearing officer issued a decision on remand finding that the date of injury was _____. The appellant/cross-respondent (carrier herein) files a request for review arguing three points of error. First, the carrier argues that the hearing officer erred in finding that the respondent/cross-appellant (claimant herein) suffered a hearing loss because of exposure to high noise levels in the workplace because this finding was not sufficiently supported by the evidence. This is essentially the same point the carrier raised in its appeal of the hearing officer's original decision. Second, the carrier argues that the hearing officer erred in failing to find that the claimant did not timely report his injury and did not have good cause for failing to do so. Third, the carrier argues that there was no evidence to support the hearing officer's finding that the employer had actual knowledge of the claimant's injury on _____. The claimant responds that there was evidence that high noise levels at work caused his hearing loss. The claimant files a request for review arguing that the hearing officer should have found his date of injury to be _____. The carrier responds that the hearing officer correctly found that the claimant's date of injury was _____.

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.

We have held that the question of whether an injury occurred is a question of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 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). 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). Applying this standard, we find that there was certainly sufficient evidence to support the hearing officer's finding of injury in the present case.

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.

We find no merit in the carrier's contention that the hearing officer erred in not addressing whether the claimant timely gave notice of injury or whether the claimant had good cause for not doing so. Whether or not the claimant gave timely notice of injury was not an issue before the hearing officer. We do not find that the hearing officer erred in not addressing an issue not before him. In any case, it appears to be undisputed that the claimant did not give notice of injury until after _____, which clearly was more than 30 days after the date of injury found by the hearing officer. While the hearing officer did not address good cause, he certainly did address the issue of actual knowledge and his finding of actual knowledge by the employer of the claimant's injury would relieve the claimant of the requirement to report the injury in any case.

The carrier does attack the hearing officer's finding that the employer had actual knowledge of the claimant's injury on _____. The carrier argues that there is no evidence to support this finding and the basis for this finding is a mystery to the carrier. We are not mystified. The hearing officer clearly bases this finding on the evidence that the employer annually had its employees tested for hearing loss and that the employer had the results of these tests, which indicated that the claimant had a hearing loss as early as _____. The hearing officer's finding of actual knowledge by the employer is supported by sufficient evidence, applying the standard of factual review set out above.

The date of injury of a repetitive trauma injury is the date the claimant knew or should have known the trauma was job related. The claimant contends that this date was _____. The date of injury is a factual matter. While there was conflicting evidence on this issue, we find sufficient evidence to support the hearing officer's finding of _____, as the date of injury.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 N. ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge