APPEAL NO. 050388
FILED MARCH 28, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on January 25, 2005. The hearing officer resolved the disputed issues by deciding that the compensable injury of _____, extends to and includes the cervical spine, and that the appellant/cross-respondent (carrier) did not waive the right to contest compensability of the cervical spine. The carrier appeals, disputing the extent-of-injury determination. The respondent/cross-appellant (claimant) responded, urging affirmance of the extent-of-injury determination but disputing the waiver determination. The carrier responded to the claimant's appeal of the waiver determination arguing that the claimant's response as an appeal was untimely. The claimant's cross-appeal was untimely and cannot be considered.

DECISION

Affirmed.

TIMELINESS OF CLAIMANT'S CROSS-APPEAL

Although the claimant's response was timely as a response, it was untimely as an appeal. Texas Worker's Compensation Commission (Commission) records show that the hearing officer's decision was mailed to the parties on January 28, 2005. In accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the claimant is deemed to have received the decision on February 2, 2005. Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Rule 143.3(e) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001. 15 days from the date of the claimant's deemed receipt of the hearing officer's decision was Thursday, February 24, 2005. Both the claimant's certificate of service and the envelope in which the response/appeal was sent to the Commission are dated March 1, 2005, and the appeal is date stamped as received by the Commission on March 7, 2005. Therefore, the appeal was not mailed, hand-delivered, or faxed within the required 15 days. The hearing officer's determination that the carrier did not waive the right to contest compensability of the cervical spine has become final.

EXTENT OF INJURY

The carrier contends that medical evidence of causation is required to establish that the compensable injury extends to the cervical spine. The claimant testified that her job duties required her to continually turn her head from left to right and up and down. We have held that when a subject is one of such scientific or technical nature that a finder of fact cannot properly be assumed to have, or be able to form, opinions of his or her own based on the evidence as a whole, and aided by his or her own experience and knowledge, testimony of experts in that subject matter is necessary. Texas Workers' Compensation Commission Appeal No. 950206, decided March 28, 1995. However, where the subject of an injury is not so scientific or technical in nature to require expert evidence, lay testimony and circumstantial evidence may suffice to establish causation. Texas Workers' Compensation Commission Appeal No. 022742, decided December 10, 2002; Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992. In the case at issue, expert testimony is not required as we do not consider the question of causation to be beyond common knowledge.

The hearing officer was persuaded in this case that the claimant's work as a data entry clerk for employer caused an injury to the cervical spine. 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). This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

In the present case, there was simply conflicting evidence on the issue of extent of injury, and it was the province of the hearing officer to resolve these conflicts. Applying the above standard of review, we find that the hearing officer's decision was sufficiently supported by the evidence in the record.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TRAVELERS PROPERTY & CASUALTY COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge