APPEAL NO. 92032
FILED MARCH 16, 1992

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992). On November 7, 1991, a contested case hearing was held. (Hearing officer) determined that Ms. T ("claimant"), a respondent herein, has suffered a compensable occupational disease resulting from her employment as a legal secretary with the law firm of "employer" and that she had given timely notice of injury to her employer within thirty days after she knew or should have known that her disease was related to her employment.

There was no dispute over the nature of her illness, carpal tunnel syndrome, as an occupational disease related to and in the course and scope of her work as a legal secretary. There were two insurance carriers who appeared at the hearing. The carrier for employer, _____, is Appellant herein. The carrier for Ms. M's previous employer, the law firm of "B" is _____, the second respondent herein ("respondent/carrier"), who appeared because there were issues as to which law firm was the employer for purposes of liability for benefits, and "contribution" between employers under the 1989 Act, Art. 8308-4.30. The hearing officer determined that the issue of contribution was not an issue before him because the law does not allow for contribution for benefits other than impairment or supplemental income benefits.

Appellant appeals only the determination that claimant gave notice of the injury to the employer within thirty days as required by Art. 8308- 5.01(a). The response was filed by the respondent/carrier, asking that the determination of the hearing officer on this point be upheld. The claimant has not filed her own response.

DECISION

Finding no error in the determination of the hearing officer that notice was timely given, we affirm his decision.

The claimant testified in her behalf. Various medical records as well as answers to written questions propounded to her surgeon were also entered into evidence. Together, the evidence demonstrates these following facts.

Claimant was employed as a legal secretary to attorney ["Mr. A"] for seven and a half years at B law firm. When he moved to the employer law firm, she went with him. Her last day of work at B law firm was March 15, 1991, and her first day of work for employer was the following Monday, March 18, 1991. Mr. A was a partner at employer law firm, as he had been at B law firm. Approximately 95% of claimant's work was word processing for Mr. A. Claimant worked from eight to 10 hours a day, often working through lunch, five days a week.

She stated that for about 18 months prior to her move to employer, she was bothered with pain and numbness in her hands, which seemed to be worse during cold weather. Her hands would go numb during typing. These symptoms occurred on and off, at work and at home, increasing over time to the extent that she had trouble carrying her groceries. Eventually, the numbness and pain was not relieved by warmth. She drove a standard transmission car, and driving this car also resulted in numbness and pain off and on. The occurrences from driving, however, grew worse and became continuous, rather than intermittent, when she began working for employer, whose location was 10 miles farther from her residence than B law firm. Her boss, Mr. A, was running for office with a professional association, and he assumed those duties by the time she worked for employer, which added to her typing responsibilities. She stated that her workload for him at employer "drastically" increased.

Her work schedule prevented her from taking time off to go to the doctor. When the pain and numbness increased to the point where she determined "I can't function like this," she went to see her family doctor, ["Dr. M"] on March 28, 1991. The pain and numbness in her left hand was worse than in the right. Dr. M diagnosed a probable carpal tunnel syndrome, and told her that her work with the word processor might be the cause. Prior to this, she had no formal knowledge of her condition, and the fact that pain and numbness occurred at night did not lead her to suspect on her own that the word processor was causing her injury. Claimant had surgery on her hand, and has not worked since April 22, 1991. Her surgeon, [Dr. JA] confirmed in his responses to written questions propounded by respondent/carrier that the carpal tunnel syndrome was a repetitive motion disease resulting from typing for her employer and that each day of typing further aggravated the condition and was injurious to the claimant.

On April 1, 1991, claimant gave a written memorandum to Mr. A. The memo informed him that she had been diagnosed with "corporeal [sic] tunnel syndrom [sic]" related to repetitious work "such as typing, sewing, etc." She describes her symptoms, says that she will need surgery, and asks that she be allowed to resign rather than take time off from his practice for surgery and recovery. Appellant notes that this memo says "I will be filing a worker's [sic] compensation report on [B law firm], as that is where I worked for the past seven and a half years and where the first symptoms appeared." She also had a conversation with Mr. A about her injury around (date of injury).

Appellant argues that this memo does not notify employer that an injury resulted from her employment with it. Appellant further notes that there is no indication that Mr. A was familiar with carpal tunnel disease or with workers' compensation notice requirements. Respondent/carrier in reply notes that a law firm is definitely in a position to appreciate liability, and that Mr. A and employer had actual knowledge of her working conditions that are described in the memo as causing her disease, which the memo specifically describes. It further notes that claimant, as a layperson, may have been under the mistaken impression that B law firm was responsible, but this does not diminish the effect of the

memo as written notice under Art. 8308-5.01.

The hearing officer is the sole judge of the relevance, weight, materiality, and credibility of the evidence. Art. 8308-6.34(e). Only if the evidence supporting the hearing officer's determination is so weak or if the decision is so against the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust will it be appropriate to reverse his decision on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The date of injury for occupational disease in the 1989 Act is the date on which an employee knew or should have known that the disease may be related to the employment. Art. 8308-4.14. The employee is required to give notice to the employer within 30 days of this date. Art. 8308-5.21(a). For purposes of giving notice of an occupational disease, the "employer" is the person who employed the employee on the date of the last injurious exposure to the hazards of the disease. Art. 8308-5.21 (d). Notice must be given to an the employer or a person holding a management or supervisory position. Art. 8308-5.21 (c). The statute does not, however, also require that the person to whom notice is given be knowledgeable about workers' compensation or occupational disease.

As a partner in the law firm, Mr. A was clearly a person qualified to receive notice on behalf of the employer. *See* Powell v. Vigilant Insurance Co., 577 S.W.2d 364 (Tex. Civ. App.-Tyler 1979, no writ) [partner generally regarded as "employer" rather than employee for purposes of workers' compensation act]; also, Napper v. Johnson, 464 S.W.2d 496 (Tex. Civ. App.-Waco 1971, writ ref'd n.r.e.) [partner's knowledge, or what he should have known, imputed to other partners]. The notice apprises the employer of the disease and its repetitious nature, as well as its connection to typing. There is sufficient evidence to support the hearing officer's conclusion that claimant complied with the notice requirements set forth in Art. 8308-5.21. *See* DeAnda v. Home Insurance Co., 618 S.W.2d (Tex. 1980); Houston General Insurance Co. V. Vera, 638 S.W.2d 102 (Tex. Civ. App.-Corpus Christi 1982, writ ref'd n.r.e.).

The decision of the hearing officer is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge