APPEAL NO. 92496

On August 14, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing officer found that the claimant, (claimant), did not timely notify the employer, (employer)., that he claimed an injury as the result of an occupational disease. The appellant, claimant herein, contests certain findings of fact, conclusions of law and alleges error in allowing testimony of two of the employees of the employer. A response by the respondent (carrier herein) asks that the hearing officer's decision be affirmed.

DECISION

The hearing officer's decision is affirmed.

Claimant was employed by (employer) as the maintenance supervisor on January 9, 1989. In that position, claimant performed electrical work, plumbing, remodeling, moving, lifting and going up and down stairs. Claimant alleges his problems began shortly after he began work. He was diagnosed as having carpal tunnel syndrome as early as 1990, and in (month year), claimant was diagnosed as probably having "bilateral carpal tunnel syndrome related to his job" by a doctor at the local VA hospital. In March 1991, claimant received injections for his condition at the VA hospital. Claimant continued to work, thinking his condition would get better. On July 11, 1991, claimant saw Dr. VM who confirmed the diagnosis of carpal tunnel syndrome. Claimant concedes he did not report the condition to the employer nor make a claim that it was work related. LP, claimant's supervisor at the time, became aware of the problems claimant was having in the wrists, and possibly elbows, in July or August 1991. In February 1992, claimant apparently had a heart attack and was absent from work. During his absence, the employer reorganized and eliminated claimant's position. Upon claimant's return to work, he was advised he was being terminated effective February 21, 1992, but would be paid until March 31st. Claimant filed his workers' compensation claim on April 9, 1992.

Both the benefit review conference (BRC) and the contested case hearing (CCH) identified the issue as whether claimant had failed to timely report his injury with the employer. The hearing officer concluded that claimant had not timely notified the employer that he claimed an injury as the result of an occupational disease. Claimant, as a pro se litigant, filed an excellent appeal, challenging findings that claimant knew, in (month year), of his condition and that good cause existed for claimant not filing his claim.

The medical records of the VA Medical Center clearly show that claimant was diagnosed on (date of injury) as having carpal tunnel syndrome. The record and testimony is also clear that claimant continued to receive treatment by way of injections in March 1991. Claimant sought another opinion on July 11, 1991, from Dr. VM, who confirmed the diagnosis of carpal tunnel syndrome, which may be job related. Although claimant's direct supervisor acquired knowledge of claimant's condition in latter July or early August 1991, claimant conceded he did not specifically report the condition to his employer until after he

had been laid off at the end of March 1992.

Texas Workers' Compensation Commission Act of 1989, TEX. REV. CIV. STAT. ANN. art. 8308-1.03(36) defines occupational disease as a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body. An occupational disease, such as this, shall be reported to the employer not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment, Article 8308-5.01(a). A claim must be filed not later than one year after the date on which the employee knew or should have known that the disease was related to the employment, Article 8308-5.01(b). The hearing officer reasonably found that claimant knew, or should have known, that his carpal tunnel syndrome may be employment related on (date of injury), when it was noted in the VA record. Claimant continued to receive treatment for his condition in March 1991. The earliest notice of the condition was given to the employer in July or early August 1991, and, even then, it is not clear that notice was given to the supervisor that the condition was work related. In Texas Workers' Compensation Commission Appeal No. 91016, decided September 6, 1991, the injury in that case was known to the employer but the evidence did not established that the employer was notified or aware that the condition was work related. Claimant in the instant case testified that he did not specifically notify the employer of the work-related injury until later.

Claimant also appeals alleging good cause exists for not timely giving notice of the injury. Claimant continued to receive treatment for his condition, as evidenced by the injections he received in March 1991. While belief that an injury is trivial may constitute good cause for not giving a required notification, the hearing officer found that good cause did not exist. The hearing officer is the sole judge of the weight and credibility of the evidence, Article 8308-6.34(e), 1989 Act, and we will not substitute our judgement for that of the hearing officer where, as here, his findings are supported by sufficient probative evidence, Texas Employers' Insurance Association v. Alcantara, 764 S.W.2d 865, 868 (Tex. App.-Texarkana 1989, no writ.).

Finally, claimant alleges error in that (Mr. K), employer's Deputy Director, and (Ms. T), employer's personnel specialist, were allowed to testify. It is alleged (Mr. K) was not employed until December 1991 and, therefore, had "no personal knowledge of the claimant's injury during the material time . . ." (Mr. K), as claimant's supervisor in December 1991 and early 1992, testified as to claimant's duties, that no claim had been filed with him, and the reasons for claimant's termination. There was no error admitting (Mr. K's) testimony.

(Ms. T's) testimony is challenged "because it lacked probative value." (Ms. T), as the employer's personnel specialist, was responsible for personnel policies and receiving workers' compensation claims among other items. She testified that claimant's claim was not filed until April 1992, and he had not reported any work related injury. She also testified that claimant, as the maintenance supervisor, had knowledge of filing workers'

compensation claims because he had worked with one of the employees who he supervised in completing that workers' compensation claim. Contrary to claimant's allegation, the evidence presented by (Ms. T) was very relevant and material. The hearing officer is the sole judge of the weight and credibility of the evidence, Article 8308-6.34(e). Therefore, even if the testimony was of limited value the hearing officer would assess whatever, if any, weight is to be given that evidence.

We find sufficient evidence to support the hearing officer's decision.

The decision of the hearing officer is affirmed.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Robert W. Potts
Appeals Judge