APPEAL NO. 92687

This appeal arises under the Texas Workers' Compensation Act (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq.* (Vernon Supp. 1993). A contested case hearing was held in (city), Texas, on November 30, 1992, (hearing officer) presiding. The issues before the hearing officer were whether the claimant's carpal tunnel syndrome arose out of the course and scope of her employment, whether she timely reported her injury, and whether she had disability. The hearing officer determined all these issues in claimant's favor, and ordered the employer's workers' compensation insurance carrier (appellant in this case, hereinafter carrier) to pay all reasonable and necessary medical expenses which are attributable to the compensable injury, and temporary income benefits (with interest) from (date of injury) and to continue such payments until the claimant reaches maximum medical improvement or until her disability ends.

In its request for review, appellant/carrier argues the following: the findings of the hearing officer are inconsistent with the claimed date of injury; the hearing officer lacks jurisdiction over a (date of injury) alleged date of injury; a finding of injury is inconsistent with medical records in evidence; claimant did not report her injury within 30 days of the date of claimed injury; and disability was not an issue at the contested case hearing and the hearing officer cannot rule on that issue. No response was filed by the respondent/claimant.

DECISION

We affirm the decision and order of the hearing officer.

At the time of the alleged injury, the claimant was employed by (employer), a temporary labor service from which she was placed with other businesses. Records from employer indicate that after being hired by employer she first worked for (Star) for one day, on October 8, 1991. Claimant next worked for (National) from January 13 through February 23, 1992, and then at (Cintas) from June 1 through June 7, 1992. The employer's records indicate that claimant called in available on (date of injury) and 11, but do not indicate that she worked on those days. The records further indicate that claimant was contacted about jobs on June 18, 19, and 24, but that when she returned the call the jobs were filled.

Claimant testified that she worked as a housekeeper for Hilton Hotel beginning in December 1991 and that she was working there on January 10, 1992. That job entailed cleaning rooms and bathrooms, making beds, and dusting. Before she worked for Hilton Hotel, she said she was a housekeeper at (Hospital) for six months.

Claimant stated that her job at National involved sorting soiled linens and at Cintas she removed name tags from uniforms. While employed through employer she said she worked 40-hour weeks.

Beginning on January 22, 1992 claimant began having physical problems while at work, including numb fingertips and painful and swollen hands. On January 24th she went

to the (Hospital) emergency room where her complaint was diagnosed as bilateral upper arm weakness. The report said that claimant "states [she] has cramps in hands and arms all days no cramps @ night," and noted the onset of the complaint as "some two weeks." (The emergency admission report gave injury onset date as "01/10/92".) The ER history reflects that on discharge claimant was told she needed additional studies to determine if she had any difficulties in the cervical spine and that she should contact a neurologist for further studies. Claimant said the emergency room doctor referred her to a specialist in (city), but that she did not pursue such treatment because she had no transportation.

On (date of injury), some time after seeing an advertisement on television which mentioned carpal tunnel syndrome (CTS), claimant was seen by (Dr. C), a neurosurgeon. Claimant stated that Dr. C examined her on that date, told her he suspected CTS, and said that she needed surgery. A July 10th report signed by Dr. C states in part, "This is a 30 year old female who is having complaints of both hands and arms. She says she has been told they are nerve problems. She went to (Hospital) for x-rays. There cervical spine films were done and she was told she had problems with her nerves. . .they told her they thought these were nerve problems in her hands and arms and most likely a [CTS] type problem. Apparently they tried to send her to (city), but she went on back to work. She says once work found out about this, she was let go. She said she had no trouble prior to starting work. She's been working for [National]. . .She said she uses her hands a lot; in fact, all day long. She had been there some six months. . . ."

Dr. C said claimant's hands ached and hurt when she went home on "one particular day in February," and that after that her hands began hurting at night. Dr. C recommended claimant have EMGs/nerve conduction velocities of the median nerve at the wrist. He said, "I think these are symptomatic and I think they are brought on by her occupational problem with her job."

On July 28th Dr. C stated in a brief note that claimant was unable to work because of CTS. In an October 19th letter addressed "To Whom It May Concern," Dr. C said claimant had been found to have clinical signs and symptoms of CTS. The letter also stated, "She did not have any problems prior to starting her work at [National]. . .I feel the job and the repetitive activity have made her hands hurt, ache, and have given her a lot of problems. I feel like she has a [CTS] and I would date this to the onset of her job and using her hands on her job."

Claimant testified that she first realized her condition was work related on the day she saw Dr. C. Prior to that, she said she thought her pain could be caused by arthritis. On January 24th, when she came into employer's office to pick up her paycheck, she said she mentioned to (Ms. B) and (Ms. AC), who worked for employer, that she was going to the emergency room because her hands were hurting. She said Ms. B asked if she knew what the problem was, and claimant replied she did not. She said she told Ms. AC that the problem could be arthritis. Ms. AC testified that she remembered claimant coming into the office on that day looking tired and saying her hands were hurting, but that she did not

mention arthritis.

After she saw Dr. C, claimant said she went to the Texas Workers' Compensation Commission and filed a claim for compensation. Included as a hearing exhibit was an Employee's Notice of Injury or Occupational Disease (Form TWCC-41) dated July 13, 1992. Apparently claimant did not directly notify her employer that she was claiming a job related injury, but she said that someone from employer called her after they were notified of her claim. A handwritten notation, dated July 16, 1992, from employer's records indicates that on that date a representative of the carrier called saying claimant was alleging an injury at National on January 24th, that she had gone to (Hospital), and that she had seen Dr. C on July 10th. The notation also said "we were not notified by employee" and "spoke with R @ [National] - said that employee told him that she has arthritis in hands and arms." Ms. AC, who is employer's account service representative, acknowledged that employer was notified that claimant was alleging a job-related injury on July 16th.

The hearing officer made pertinent findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1.At all times relevant to this decision, claimant was employed by [employer].

5.As a result of the repetitive hand motions which claimant performed on the job, she experienced carpal tunnel syndrome.

6.Prior to (date of injury), claimant neither knew nor should have known that her carpal tunnel syndrome was caused by her employment.

7.On (date of injury), claimant sustained a repetitive trauma injury as a result of her employment with [employer].

8.Within thirty days of (date of injury), [employer] had actual knowledge that claimant was alleging to have sustained a compensable repetitive trauma injury.

9.Since (date of injury), claimant's carpal tunnel syndrome has prevented her from obtaining and retaining employment at wages equivalent to her preinjury wage.

CONCLUSIONS OF LAW

1.The Commission has jurisdiction to decide the issues presented.

3.On (date of injury), claimant sustained a repetitive trauma injury within the course and scope of her employment with [employer].

4.Claimant's injury was timely reported to [employer].

5.Claimant has had disability since (date of injury).

6.Claimant's injury is compensable under the Texas Workers' Compensation Act.

"Repetitive trauma" is defined as damage or harm to the physical structure of the body occurring as a result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment. Article 8308-1.03(39). Repetitive trauma injuries are included within the definition of "occupational disease," which is itself a part of the Act's definition of "injury." Article 8308-1.03(27), (36). In order to recover for an injury of this type, an employee must not only prove that repetitious, physically traumatic activities occurred on the job, but must also show that a causal link existed between the traumatic activity and the incapacity; that is, the disease must be inherent in the type of employment as compared with employment generally. Texas Employers Insurance Association v. Ramirez, 770 S.W.2d 896 (Tex. App.-Corpus Christi 1989, writ denied). *See also* Texas Workers' Compensation Commission Appeal No. 92025, decided March 16, 1992, and cases cited therein.

Because a repetitive trauma injury occurs over time rather than from a single incident, the notice requirements are different than they are for injuries. Article 8308-5.01(a) provides that if an injury is an occupational disease, the employee or person acting in his behalf shall notify the employer of the injury no 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.

In its appeal the carrier complains that the claimant alleged a January 24, 1992 date of claimed injury; that the evidence does not support the hearing officer's finding of a (date of injury) date of injury; and that the hearing officer lacked jurisdiction over a (date of injury) date of injury because claimant was not working for employer on that date. For purposes of the 1989 Act, the date of injury in the case of an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. Article 8308-4.14. The evidence in the case below supports the hearing officer's findings that (date of injury), when claimant saw Dr. C, was the earliest date she was aware that she had a medical condition which could be related to her job. Applying the facts to the statute, (date of injury) became the date of injury for purposes of notification.

The carrier also argues that the emergency room records reflect that the onset of claimant's injury was two weeks prior to January 24th, or January 10th, a date on which she was not working for employer; therefore, it contends, logic dictates that she did not sustain her injury in the course and scope of her employment for employer. Even if it is assumed that claimant's condition began after she began working for employer, carrier contends, her injury still did not occur over time because no time lapsed between her starting work on January 13th and her onset of pain.

The record below discloses the following: claimant worked for employer one day in 1991 (October 8th), and thereafter worked for Hilton Hotel for a period of time. She next worked for employer at National for the period January 13 through February 23, although it is not apparent from the record whether she worked each day during this period. On January 24th she was seen at the emergency room for pain and weakness in her hands. Thereafter, she worked twice more for employer: at National from May 11-17 and at Cintas from June 1-June 7.

The medical records in evidence show claimant was seen for hand pain on January 24th, but that she did not pursue further treatment for this problem until (date of injury). Dr. AC's report refers to the ER visit, recommends further studies, and concludes "I think these are symptomatic and I think they are brought on by her occupational problems with her job." While the history contained in Dr. C's report incorrectly states that claimant had worked for National "some six months," it correctly characterized claimant's job as sorting linens all day. On July 28th Dr. C wrote that claimant was unable to work "because of carpal tunnel syndrome." In an October 19th letter Dr. C said claimant "has been found to have clinical signs and symptoms of carpal tunnel syndrome. . .I feel like she has a carpal tunnel syndrome and I would date this to the onset of her job and using her hands on her job." Dr. C directly related claimant's physical problems to her work sorting linens at National.

Although the medical evidence in this case was not overwhelming in its strength, it was nevertheless sufficient evidence upon which the hearing officer could have based her determination that the claimant was suffering from an occupational disease which resulted from her employment with employer. That being the case, it would be immaterial whether the disease had its genesis in another job, as carrier appears to argue, so long as the claimant continued to be exposed to the injurious condition in the current job. As Article 8308-3.01(b) provides, "if an injury is an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of the disease is considered to be the employer of the employee under this Act."

We have previously construed this language in a case whose facts are somewhat similar to this one. In Texas Workers' Compensation Commission Appeal No. 92032, decided March 16, 1992, the claimant, a legal secretary who had worked for a law firm for seven and one-half years moved to another firm. Both jobs required heavy word processing, from eight to ten hours a day. She began experiencing symptoms of pain and numbness in her hands some 18 months prior to her job change, which increased in severity over time. Ten days after she began the second job, she was diagnosed with carpal tunnel syndrome. Prior to that time, she had not been aware of what her condition was or that it was job related. This panel upheld the hearing officer's determination that the claimant timely notified her employer, noting that 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, Article 8308-5.21(d), and that the second

employer was liable for compensation.

One difference between the instant case and Appeal No. 92032 is that in the latter case the claimant notified someone in a supervisory capacity at her second employer. It appears that the claimant in this case did not affirmatively notify her employer of her injury. However, she testified that someone from employer called her some time in July, asking about her workers' compensation claim; the carrier's evidence indicates this occurred on July 16th, which is within 30 days of the date claimant first had knowledge that her condition could be related to her job. The 1989 Act provides that actual knowledge of an injury on the part of the employer will defeat a defense of lack of timely notice. Article 8308-5.02. We thus find sufficient record support for the hearing officer's determination that the claimant's injury was timely reported to her employer.

Finally, carrier argues that disability was not an issue at the hearing. The record indicates, to the contrary, that whether the claimant had disability was an unresolved issue from the benefit review conference, to which the carrier did not object at hearing. We find no support for this contention.

For the foregoing reasons, the decision and order of the hearing officer are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge