APPEAL NO. 931043

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly V.A.C.S., Article 8308-1.01 *et seq*.) (1989 Act). A contested case hearing was held on October 1, 1993, in (city), Texas, to determine the issue of whether the claimant timely reported a carpal tunnel injury of (date of injury), within 30 days of the date she knew or should have known the injury was related to her employment. The appellant, hereinafter claimant, requests this panel's review of the decision of hearing officer (hearing officer) that the claimant did not notify her employer of a work-related injury in a timely manner and therefore is not entitled to workers' compensation benefits. The respondent, hereinafter carrier, summarizes the evidence in the case and contends that the hearing officer's decision should be affirmed.

DECISION

We affirm the decision of the hearing officer.

The claimant was first employed by (employer) in August of 1990, as a night audit supervisor, a job which required her to process the day's paperwork at a hotel. Because of a 1988 skiing accident which injured her back and knee, she has used crutches on a daily basis.

The claimant testified that she began experiencing problems with her right wrist a few months after she began work for employer. She reported the problem to her orthopedic surgeon, (Dr. H), who gave her a splint and told her he did not know whether the problem was caused by work or was due to use of her crutches. When she showed no improvement, Dr. H referred her to a hand specialist,(Dr. L). In April 1991 Dr. L performed tests on claimant and stated an impression of right carpal tunnel syndrome and tenosynovitis of the first dorsal compartment, right wrist. Following an EMG he also stated that he felt the claimant had irritated a nerve by walking on crutches, although he also noted that claimant's job required a considerable amount of 10-key operation. On May 24, 1991, Dr. L performed surgery on claimant's wrist, and claimant was given a platform crutch to use to minimize wrist strain. At the time, the claimant used her own private health insurance.

Although the claimant said her wrist improved initially after the surgery, her problems later recurred and she sought treatment from another hand specialist, (Dr. F), in May 1992. Following a nerve conduction study which showed "mild CTS," Dr. F performed a second surgery on July 30, 1992. Upon Dr. F's instructions, the claimant did not return to work until September. At that point the claimant said she had not discussed with Dr. F any relationship her problem could have to her work. Around the same time, the claimant said she had hip surgery, and was off work in October 1992 because of a nonwork-related aggravation of her hip problem. In February 1993, the same month claimant left her night auditing job for a daytime position with employer in the accounting department, the claimant reported increased wrist pain from more work to Dr. F, who ordered more tests and increased claimant's physical therapy to twice a week.

By (month year) the claimant contended she could not handle work and her wrist pain at the same time. She called Dr. F, who discussed giving claimant a stronger pain killer, but claimant believed she could not work under that medication. She called her supervisor, (Ms. LV), who told claimant she needed a doctor's note in order to come back to work. Claimant said she stayed home from work the next day because Dr. F wanted to see her before giving her a note. That day, claimant said, Dr. F gave her a steroid injection and a new wrist splint, and took her off work. At that time, when her doctor took her off work, claimant said, she came to the "total realization" that her wrist problems might be work related. On (date of injury) claimant told Ms. LV that she was going to file a workers' compensation claim because of her wrist.

At the hearing the claimant acknowledged that in October 1992 she discussed computer use with Dr. F and that she and Dr. F knew that work "contributed to" her condition. She also said that during that same time period she told Ms. LV that she was having recurring problems with her wrist and that she needed some accommodation in her work station because this was causing the problem. (She also said that in July 1992 she had asked Ms. LV for adjustable chairs both for herself and for others who worked with her but that these did not arrive until she had transferred to the new position.) Claimant's position at the hearing was that the October conversation constituted notice to her employer of her injury; alternatively, she contended that she had good cause for failure to timely report because Ms. LV had indicated to her that the employer's general manager wanted to terminate her and she felt it was better to continue to use her private insurance rather than report a workers' compensation claim. Claimant said she was seeking medical benefits only from October 1992.

Ms. LV testified at the hearing that until October 1992 the claimant did not say that her job duties contributed to any of her health problems. In October, she said the claimant told her the office chairs were in poor condition, not conducive to typing, and that they could be bad for employees, but she said the conversation was very general and did not specifically mention any injury to claimant. She also said that at claimant's performance review on (date of injury), she mentioned that the general manager had said he had received complaints regarding the way claimant was handling employer's guests; after that conversation, she said claimant told her she wanted to file a workers' compensation claim. Ms. LV said any problems with claimant were limited to her performance; she also said that the claimant was still employed with employer.

The hearing officer determined that claimant discussed the effect of her work activities on her wrist with Dr. F in October 1992; that claimant did not report a work- related injury to her employer in October 1992; that she discussed increased work activities in relation to increased wrist problems with Dr. F on February 22, 1993, and that she knew her wrist problems were work related on that date; and that she notified her employer that her problems were work related on (date of injury). The hearing officer also concluded that the claimant did not notify her employer of a work-related injury no later than the 30th day after the date on which she knew that the injury was work related; that the employer and the carrier did not have actual knowledge that claimant was alleging a work-related injury until

(date of injury); and that the claimant did not have good cause for failure to give timely notice to her employer.

In her appeal the claimant stresses the gradual, insidious, and cumulative nature of her injury, and states that she verbally reported a work-related injury to her supervisor in October 1992.

The 1989 Act provides that if an injury is an occupational disease, such as carpal tunnel syndrome, the employee or a person acting on the employee's behalf shall notify the employer of the injury 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. Section 409.001. Courts of the state have held that the standard of when the time period of notice of an occupational disease begins to run is a flexible one, and means when the employee as a reasonable person recognized the seriousness and work-related nature of the disease. Commercial Insurance Co. of Newark, N.J. v. Smith, 596 S.W.2d 661 (Tex. Civ. App.-Fort Worth 1980, writ ref'd n.r.e.).

In this case the hearing officer, although reciting evidence from Dr. F's report that the claimant reported in September and October 1992 that "excessive computer work" was aggravating her wrist, nevertheless found that February 22, 1993, was the date on which knowledge could be imputed to the claimant. This determination finds support in Dr. F's notes of that date which state in part, "In February, [claimant] started having more hand pain which she relates to switching from the night shift to the day shift. There is more work involved on the day shift." This finding also is consistent with claimant's testimony concerning her conversations with her doctor and her supervisor on and after October 1992.

The hearing officer's determination that claimant's first notice to her employer was on (date of injury), also is supported by the evidence. While the claimant testified that she informed Ms. LV in October that her work station was causing her wrist pain, Ms. LV testified that the conversation was general in nature and concerned all similarly situated employees. While the 1989 Act does not require written notice, and does not prescribe any particular form or style of notice, to fulfill the statutory notice requirements the employer must know both the general nature of an injury and the fact that it is work related. Houston General Insurance Company v. Vera, 638 S.W.2d 102 (Tex. App.-Corpus Christi 1982, writ ref'd n.r.e.); De Anda v. Home Insurance Company, 618 S.W.2d 529 (Tex. 1980). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility, Section 410.165(a), and is entitled to resolve conflicts and inconsistencies in the evidence. Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.). Absent some showing of passion, bias, or prejudice which influenced the fact finder, or a determination that the finding is manifestly wrong, a reviewing body will not invade the province of the fact finder with regard to credibility of a witness. Genzer v. City of Mission, 666 S.W.2d 116 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.).

Our review of the record does not convince us that the hearing officer's determination

is not supported by sufficient evidence, or is clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). We accordingly affirm the hearing officer's decision and order.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge