APPEAL NO. 931179

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq*.). At a contested case hearing held in (city), Texas, which opened on November 5 and closed on November 10, 1993, the hearing officer, (hearing officer)., took evidence on the following disputed issues: 1. Was the respondent (claimant) injured in the course and scope of her employment on or about (date of injury); and, 2. Did the claimant give timely notice of any such injury to her employer. The hearing officer concluded that claimant was injured in the course and scope of her employment on or before January 12, 1993, as a result of work-related repetitive trauma; that claimant gave timely notice of her injury to (employer) when she informed her supervisor in mid-1992 that she had begun experiencing unusual pain in her hands; that claimant knew or should have known her injury might be work related on July 8, 1993; that claimant reported her injury to the employer on August 2, 1993; that if it be determined that claimant knew or should have known her injury might have been work related on or after June 9, 1993, she had good cause for not reporting it to employer since she reported the injury to (company) believing that the company was the correct employer for reporting purposes; and, that claimant has been unable to retain or obtain employment at her pre-injury equivalent wages as a result of her injury since June 9, 1993.

Of the 26 findings of fact made by the hearing officer, the appellant (carrier) specifically challenges only the finding that claimant has been unable to return to her job or to any job requiring the use of her hands due to her injury. Carrier generally challenges the sufficiency of the evidence to support the above stated legal conclusions except the conclusion that claimant also reported her injury to employer on August 2, 1993. In her response, claimant asserts the sufficiency of the evidence to support the challenged factual finding and legal conclusions and requests affirmance.

DECISION

Finding the evidence sufficient to support all the findings; disregarding as alternatives and surplusage so much of the conclusions as state claimant's date of injury to be on or before January 12, 1993, and July 8, 1993, her date of reporting her injury to her employer as mid-1992, and the date her disability began as prior to July 8, 1993; and further finding the evidence sufficient to support implied findings that the date of claimant's injury was (date of injury), that she provided her employer with timely notice of such injury on August 2, 1993, and that she had disability on and after (date of injury), we affirm.

Before discussing the evidence, we observe that the hearing officer, based upon numerous factual findings, appears to have reached alternative conclusions of law respecting both the date of claimant's occupational disease injury as well as the date she notified employer of the injury. These alternative conclusions may have been reached because of an apparent change in claimant's employer after January 12, 1993, the date stipulated to have been her last injurious exposure to the repetitive motions of her job. However, the Appeals Panel has recognized the proposition that the decision of the fact finder should be affirmed if it can be sustained on any reasonable theory supported by the

evidence (Texas Workers' Compensation Commission Appeal No. 93502, decided August 4, 1993), and has also previously disregarded unnecessary findings. *See e.g*. Texas Workers' Compensation Commission Appeal No. 92124, decided May 11, 1992.

Claimant testified that she commenced employment with employer in October 1979. She said she worked as an electrical assembler for over 13 years and up to January 12, 1993, when her obstetrician, (Dr. K), took her off work for pregnancy complications. She delivered her baby on June 9, 1993, and has not since returned to work because of the pain and numbness in her hands from her diagnosed bilateral carpal tunnel syndrome (CTS). She said the division in which she worked for employer was sold by employer in February 1993 to the company. The parties stipulated that on (date of injury), the date claimant contended was her date of injury, she was employed by company; that on January 12, 1993, claimant was last injuriously exposed to the workplace hazards she alleged to have caused her CTS; and that on January 12, 1993, employer had its workers' compensation insurance coverage with carrier. Claimant apparently never performed any work for company to the date of the hearing. Neither the company nor its workers' compensation carrier, if any, were parties to this proceeding.

Claimant testified that her duties as an electrical assembler building electrical harnesses for employer required her to use her hands and various hand tools in continuous, repetitious movements including stripping and crimping wires, affixing terminals, soldering, and so on. She used pliers, screwdrivers, crimpers and other hand tools, some of which required her to exert considerable force. She estimated that in 13 years of such work she performed repetitious hand movements for approximately 26,000 hours. There was no evidence that controverted this testimony. In early to mid-1992, her duties were, apparently, temporarily changed to helping a coworker move electrical harness boards, which were basically four feet by eight feet, one-inch thick plywood sheets. Her hands began to ache and claimant said she went to her supervisor about it so she could see the nurse. She indicated that employees could not visit the nurse without telling the supervisor the reason. Claimant said she obtained her supervisor's permission to go to employer's nurse and "told her my hands were just aching." This testimony was unclear as to whether claimant made that statement to her female supervisor, to the nurse, or to both.

Claimant provided no more specific testimony or other evidence concerning this time frame and the content of her statement to her supervisor. The hearing officer made findings that "in mid-1992" claimant began using harness boards and thereafter began experiencing unusual pain in her hands, and that "in mid-1992" she reported the pain to her supervisor and the nurse. These findings are supported by claimant's testimony. However, apparently based on these findings, the hearing officer reached the conclusion that claimant "gave timely notice to [employer] when she informed her supervisor in mid-1992 that she had begun experiencing unusual pain in her hands." If this conclusion purports to say that claimant provided employer with timely notice of a work-related injury, it is obviously unsupportable not only because it fails to sufficiently state a date of such notice of injury but also because it is not based on a finding that claimant notified employer of a job-related injury. While the notice of injury does not have to specify the exact nature of the injury, it

does have to inform the employer of the general nature of the injury "and the fact that it is job related." Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225, 228 (Tex. App.-El Paso 1989, writ denied). Here there was no evidence that claimant advised her employer of anything more than that her hands hurt. However, because this conclusion was surplusage, we disregard it.

Claimant also said she asked the nurse she saw "in mid-1992" about CTS and was told she just had "strained" hands. The nurse gave her Advil, said her hands would be "okay" when she resumed her usual duties, and returned her to work. Claimant went on to testify that in September 1992 she became ill with an ulcer and reflux, also became pregnant, and from September through December 1992 missed various periods of work because of these conditions. Claimant worked through January 12, 1993, after which she was taken off work for the duration of her pregnancy due to complications. She said that in the September - December 1992 period, she had intermittent hand pain but nothing major, and that in April and May 1993, when she was not working, she experienced a lot of problems with her hands. She stated that Dr. K advised her the problems with her hands were related to her pregnancy and should abate after childbirth. It was the carrier's position that claimant's CTS was caused by her pregnancy and thus was a noncompensable ordinary disease of life. It was claimant's apparent position that given the experience of hand pain after stopping working and the information from her obstetrician, she did not know nor should she have known that she had job-related CTS until she was advised of such by a hand surgeon on (date of injury).

Claimant said that after giving birth on June 9, 1993, her hand problems did not resolve and she felt she needed to see another doctor to find out what was wrong so she went to the company on July 9, 1993, and reported the problem because she "believed they were my employer." She denied knowing prior to that date that her hand problems were work related. She said she knew she had aching, painful hands but did not know she had CTS nor that it was work related. She said her hand problems got "really bad" during her pregnancy and that Dr. K was telling her the condition was only temporary. A note from Dr. K stated that claimant developed CTS during her pregnancy and that "the majority of pregnancy related Carpal Tunnel Syndromes do go away after delivery." Claimant also said she saw a nurse at the company who made an appointment for her with a hand surgeon, (Dr. T). She saw Dr. T on July 15th, he obtained an EMG on July 23rd, and on (date of injury) told her she had bilateral CTS which was caused by her 13 years of repetitive motions on the job. She testified she did not know she had bilateral CTS and did not know it was caused by her job until she was so advised by Dr. T on (date of injury). A letter from Dr. T stated that claimant had CTS symptoms off and on for approximately one year, that her symptoms got worse immediately prior to the delivery of her child, that they persisted after the delivery, and that in his medical opinion, considering claimant's assembly work for many years, her bilateral CTS "is most likely related to an on-the-job injury."

Claimant also stated that Dr. T took her off work and scheduled separate operations for her hands but that she has not yet had surgery because carrier has disputed the claim.

Dr. T's note of (date), took claimant off work until further notice and referenced surgery scheduled for August 13, 1993.

Claimant's husband testified that claimant first made a claim with the company because her department had been sold to the company. He further stated that Dr. T wanted to get an EMG but that the company disputed the claim so he talked with a Texas Workers' Compensation Commission (Commission) employee on or about July 17th and was advised to file a claim against employer. He said he talked to employer's workers' compensation administrator, (Mr. M), on August 2, 1993, about claimant's injury. According to claimant, the company disputed her claim because she "had never worked inside their plant;" her husband then talked to an employee of the Commission who suggested a claim be filed with employer; and her husband then reported her injury to Mr. M on August 2, 1993. Carrier has not appealed from the hearing officer's finding that on August 2, 1993, claimant notified employer of her injury nor from the conclusion that claimant also reported her injury to employer on August 2, 1993.

Claimant also testified she filed her claim on August 4, 1993, stating the date of injury as January 12, 1993, because her husband had talked to a Commission employee who suggested using that date because it was the date of her last injurious exposure while working for employer. However, on September 14, 1993, claimant said she amended her claim to state the date of injury as (date of injury), because that was the date Dr. T advised her she had work-related CTS.

Section 408.007 provides that "the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment." It was claimant's theory throughout the hearing that her date of injury was (date of injury), the date Dr. T informed her she had CTS, and that it was caused by her work with employer. It was also her theory that she timely reported her (date of injury) injury to employer on August 2, 1993. Section 409.001(a) provides that for an occupational disease an employee 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 the injury may be related to the employment. While the hearing officer did conclude that claimant reported her injury to employer on August 2, 1993, a matter not appealed, he also appeared to conclude she first reported her injury in mid-1992. As above stated, we regard that conclusion as surplusage and need not consider it further. Because we imply a finding below that claimant's date of injury was (date of injury), it is apparent she timely reported her injury.

As with the date claimant provided notice of injury to her employer, the hearing officer's conclusions respecting the date of injury are also stated in the alternative and, in essence, provide three dates of injury, namely, on or before January 12, 1993, July 8, 1993, and on or after June 9, 1993. Those conclusions are as follows:

CONCLUSIONS OF LAW

2.The Claimant was injured in the course and scope of her employment on or before January 12, 1993, as the result of work related repetitive trauma.

4.The Claimant knew or should have known her injury might be work related on July 8, 1993.

6.If it is determined that Claimant knew or should have known her injury might have been work-related on or after June 9, 1993, she had good cause for not reporting it to [employer] since she reported the injury to [company] which she had believed was the correct employer for reporting purposes.

Conclusion of Law No. 4 relates to Finding of Fact No. 21 which states that "[o]n July 8, 1993, the Claimant and her husband discussed these matters and concluded the CTS might be work-related." However, Finding of Fact No. 23 states that "[a]fter mid-June, 1993, the Claimant sought treatment for her hands from an orthopedic surgeon who informed her on (date of injury), that she had bilateral CTS due to work-related repetitive trauma." This finding, which is not specifically challenged by the carrier and which is supported by the evidence, together with Conclusion of Law No. 6, sufficiently support an implied finding that claimant's date of injury was (date of injury). In Texas Workers' Compensation Commission Appeal No. 93452, decided July 21, 1993, the Appeals Panel stated that "[a]lthough findings of fact are made in contested case hearings, the Appeals Panel has allowed implied findings to support the decision when sufficient evidence exists to support them. (Citations omitted.)" In Texas Indemnity Insurance Company v. Staggs, 134 S.W.2d 1026, 1030 (Tex. Comm'n. App. 1940, opinion adopted), the Commission considered certain special issues submitted to the jury and the jury's answers thereto, and observed that unwarranted findings may be disregarded and judgment rendered on the valid findings. The Commission further indicated that the issues submitted to the fact finder and the answers from the fact finder should be given "a reasonable rather than a technical construction . . . as a whole, and which permit the disregarding of conflicts or contradictions which are apparent rather than real and the entry of judgment, without reference to immaterial issues, on the answers to material issues which afford sufficient basis for judgment. [Citations omitted.]"

Finding of Fact No. 26, the only factual finding specifically challenged by the carrier, states that "[t]hrough the date of this hearing, the Claimant has been unable to return to her job or any job requiring the use of her hands, due to this injury." We are satisfied that this finding is supported by the evidence. Claimant so testified, there was no evidence to the contrary, and the Appeals Panel has many times stated that the issue of disability can be established by the testimony of the claimant alone. *See e.g.* Texas Workers' Compensation Commission Appeal No. 91083, decided January 6, 1992. Further, the evidence showed that Dr. T took claimant off work on (date), until further notice. Conclusion of Law No. 7 states that "[t]he Claimant has been unable to retain or obtain employment at a wage equivalent to her pre-injury wage as a result of this injury since June 9, 1993." As with the date of her injury, this conclusion is supported by the evidence except for the date. We have implied a finding that the date of claimant's injury was (date of injury). Since claimant

could not by definition (Section 401.011(16)) have disability prior to the date of her injury, and since the evidence supports it, we imply a finding that the inception date of claimant's disability was (date of injury), and the "Decision & Order" portion of the hearing officer's decision is reformed to reflect the date of "(date of injury)," instead of "January 13, 1993."

Section 410.165(a) provides that the hearing officer is the sole judge of the weightand credibility to be given to the evidence. The hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We will not disturb the hearing officer's findings unless they are so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W. 660 (1951); Pool v. Ford Motor Co., 715 S.W. 2d 629 (Tex. 1986).

The challenged factual finding, and the challenged legal conclusions as supported by the implied findings, being sufficiently supported by the evidence, the decision and order of the hearing officer, as modified above, are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge