

APPEAL NO. 93776

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S. art 8308-1.01 *et seq.*), a contested case hearing was held in (city), Texas, on July 22, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) failed, without good cause, to timely notify her employer of her job related carpal tunnel syndrome (CTS) and that the claimant has not established that she has or has had disability from any job related injury. Claimant appeals asserting that she timely reported her job related injury once she was aware of what her injury was and that the injury was in fact job related. The respondent (carrier) urges that the evidence is sufficient to support the hearing officer's decision and asks that it be affirmed.

DECISION

Not finding the evidence contrary to the hearing officer's findings to be so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and finding evidence sufficient to uphold the decision, we affirm.

The issues presented were whether the claimant timely reported her injury, and if not, whether the claimant had good cause for the untimely reporting and whether the claimant had disability. Regarding the latter issue, the only evidence in the record indicated that the claimant continued in her employment all through the time frame involved in this case. Hence, there was no evidence to establish any disability at this time.

Regarding the timely reporting issue, there was conflicting evidence on the matter and the case hinged largely on the credibility of the claimant. The hearing officer, as the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence (Section 410.165(a)), apparently was not convinced by the claimant's version of the events. Succinctly, there was evidence in the testimony of the claimant that the claimant had been experiencing pain and swelling in her wrists for a number of months and that it occurred at work where she did considerable keyboard entry duties on a proof machine in a bank. On (date of injury), she saw her doctor primarily for a sinusitis condition, but told him about her wrist problems and conditions. Pertinent medical entries from that visit indicate that "she is having achiness from what sounds like work related carpal tunnel syndrome" and "possible CTS - not examined today" and that "I also rec she try nocturnal splints." There was also evidence that the claimant possibly discussed the problem she was experiencing with her wrists with her supervisor during a (date) evaluation period but that the claimant did not indicate what was causing it or that it was work related. The claimant testified that she did not know that she had CTS with any certainty or that it was work related until February 23, 1993, after she had an appointment with another doctor who ran specific tests for CTS. An Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) signed by the claimant on "(date)" was introduced by the claimant. Her supervisor testified that a note she made led her to believe that the claimant first told her it was work related on (date). Further, there was evidence that the employer reported the claimant's asserted job related injury to the

Texas Workers' Compensation Commission around February 16, 1993.

The hearing officer found that the claimant had been experiencing pain, swelling of the joints and numbness with her hand for up to a year prior to (date of injury) and that she knew or should have known that her CTS may be related to her employment on (date of injury), after her doctor's appointment. The hearing officer also determined that claimant's notice of injury to the employer was not timely and that there was no good cause for the failure to give timely notice. Where there is conflict and inconsistency in the evidence, as here, it is the responsibility of the hearing office to resolve those conflicts and inconsistencies and makes finding of fact in the case. Bullard v. Universal Underwriters Insurance Co., 609 S.W.2d 621 (Tex.App.-Amarillo 1980, no writ). We have repeatedly held that appellate level bodies are not in a sound position to substitute their judgment for that of the finder of fact in the absence of a "no evidence" situation or a situation where the evidence contrary to the fact finder's determination amounts to the great weight and preponderance of the evidence and results in his determination being clearly wrong and manifestly unjust. See Texas Workers' Compensation Commission Appeal No. 93721, decided September 28, 1993; Texas Workers' Compensation Commission Appeal No. 93767, decided October 8, 1993; Texas Workers' Compensation Commission Appeal No. 93623, decided September 8, 1993; Texas Workers' Compensation Commission Appeal No. 92125, decided May 4, 1992. See also Texas Employers Insurance Co. v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ); National Union Fire Insurance Co. of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In a recent case concerning the issues of timely notice and good cause for the failure to give timely notice, we discussed good cause and the reasonably prudent person standard; matters that apply equally to the case at hand. Texas Workers' Compensation Commission Appeal No. 93757, decided October 7, 1993. In that case, also involving CTS, we upheld the hearing officer's determination that the claimant knew or should have know of the work related nature of her injury at a date earlier than the date asserted by the claimant in giving notice of the injury. Although there are recognized factual distinctions between the cases, in both cases we can not say there is an insufficient evidentiary basis for the determinations of the hearing officer or an incorrect application of the law to those determinations. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge