APPEAL NO. 93893

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly V.A.C.S., Article 8308-1.01 *et seq*.). On September 8, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) was injured on the job on (date of injury), but did not give notice until some time in January 1993, and did not have good cause for such delay; therefore, claimant is entitled to no benefits. Claimant asserts that findings of fact, which say she reported the injury in January 1993, and did not have good cause for delay, are in error. Respondent (carrier) replies that the evidence is sufficient to uphold the decision.

DECISION

We affirm.

At the hearing the issues were stated to be: (1) whether claimant sustained a repetitive physical trauma injury to her wrists at work; (2) whether she timely reported an injury, and if not, was there good cause for delay; and (3) did claimant have disability after March 30, 1993.

Section 410.204(a) states that the Appeals Panel "shall issue a decision that determines each issue on which review was requested."

On appeal the claimant asserts that she did have good cause for not reporting timely. However, she also repeats what she testified to at the hearing--that she told her supervisor on (date of injury), that her fingers became numb and that she could not feel with them and dropped things; she added in both the appeal and her testimony that she knew this was work related. She stated that she saw a doctor when the pain became too intense.

The Appeals Panel determines:

That the evidence sufficiently supports the findings of fact that claimant reported her injury in January, and that claimant does not have good cause for failing to timely notify the employer.

Claimant began work for (employer) on (date). She worked as a salad maker. She cut some vegetables by hand and used large bowls for mixing the ingredients. When asked how much work she did in an hour, she replied, "a whole hour's worth." She testified that on (date of injury), her fingers first became numb. She added that her wrists were numb and tingling and pain shot up her arms; she dropped things. She then told a supervisor, (RM) that her arms hurt but she could not recall if she told him why they hurt. She thereafter said again, though, that she told RM on (date of injury) that her problem was work related. She said that she knew it was work related immediately because she did not have the problem except at work, and it was worse when she was mixing salad. She took aspirin and continued to work. She first saw a doctor on February 26, 1993, because, she stated,

she did not have the money to seek medical care before. She said she was taken off work on March 10, 1993.

On cross-examination, claimant stated that she noticed the numbness in her hands on (date of injury), and said that there was no doubt in her mind then that it was a work injury. The doctors at first told her it was tendinitis and then told her it was carpal tunnel syndrome in March 1993. In rebuttal, at the end of the hearing, claimant again testified that she did not go to the doctor until February 1993, because of lack of money and, she added, because the pain got more severe. However, claimant then stated that she had taken a lot of aspirin to be able to keep working.

Both (SD), the claimant's immediate supervisor, who worked by her side approximately one-half of each day, and RM testified that claimant said nothing about an injury in (month year). RM said claimant told him in February 1993 (or possibly as early as January 1993) that her hands were hurting while asking for an over-the-counter pain tablet, which he carried. (RM had said that he is repeatedly told by employees of soreness, headaches, etc., and keeps such medication for just such minor irritants both in himself and others.) RM was sure that when claimant told him of pain in January or February 1993 that it was not tied to the job or the manner of work. SD testified that she was sure that claimant said nothing until January 1993, and when something was said about pain in her hands, claimant added that it was tied to some previous condition. Both SD and RM testified that they first heard of the connection to the job after claimant left employment in March 1993.

The medical records further confused matters by indicating that claimant's history of onset stated that the injury occurred, approximately, at the first of the year, 1993. She also complained, at her first visit of February 26, 1993, that the pain was made worse by working. On March 10th, (Dr. C) recorded a history of frostbite while claimant lived in Illinois; Dr. C states that "this is a chronic problem for her. . . ." He added that her current job will "make her hands worse." On March 21, 1993, claimant's problem was first described as carpel tunnel syndrome, and she was told not to work for three days.

On March 10, 1993, claimant started working also at (employer 2) doing light cooking. She worked there until April 14, 1993. She states that she is not working now, can do nothing with her hands, and is no longer being treated for the condition.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He believed that the evidence indicated claimant was injured on (date of injury), at work. He did not believe claimant when she said that she told RM on the same day of the injury. In part of claimant's testimony, she indicated that she may not have related her condition to the job when she complained to RM on (date of injury); at other points, she said that she did relate her pain to the job on (date of injury). She agreed that she did not tell SD until sometime in January 1993. The hearing officer evidently believed both SD and RM when they said that claimant complained of pain no earlier than January 1993, but never related it to the job while she was still working for employer until approximately March 21, 1993. (Section 409.001 provides that notice of injury be given to the employer not later than 30 days after injury, or after claimant knew or should have known

an occupation disease related to the job. Section 409.002 then provides that if a claimant has good cause for not giving timely notice, then the failure to timely notify will not defeat the claim.) Claimant was certain that she knew the injury occurred on (date of injury) and that she knew then that it was related to the job.

The question of whether good cause was shown for delay in notification is determined by whether or not the claimant used the degree of diligence that an ordinarily prudent person would have used in giving notice. *See* Texas Workers' Compensation Commission Appeal No. 92657, decided January 15, 1993. The appellate court in Farmland Mutual Insurance Co. v. Alvarez, 803 S.W.2d 841 (Tex. App.-Corpus Christi 1991, no writ) stated that the question of good cause was ordinarily for the trier of fact to determine, noting that the trier of fact was charged with determining credibility of witnesses. In its review of the good cause determination at the trial court, the appellate court considered whether the evidence supported the finding as to good cause.

The testimony of RM and SD, together with claimant's repeated assertions that she knew immediately that her injury was work related, provided sufficient support for the hearing officer's findings of fact that claimant reported her injury in January 1993, and did not have good cause for failing to timely report it. The decision and order are sufficiently supported by the evidence and are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge