APPEAL NO. 94330

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held in (city), Texas, on February 7, 1994, (hearing officer) presiding. With regard to the issues on appeal, the hearing officer held that the claimant, who is the appellant in this case, did not tell her employer that she had sustained an occupational disease and that there was no good cause for claimant's failure to notify her employer. The claimant essentially argues on appeal that she did not notify her employer because she was not aware that she was entitled to workers' compensation. The carrier responds that the hearing officer's decision should be affirmed.

DECISION

We affirm.

The claimant was employed as a receptionist by (employer) from July 5, 1990 to October 31, 1991, when she was terminated. She testified that her job duties included answering the telephone and taking messages, doing light typing, and operating the copier and a laminating machine. Due to some weakness she was experiencing in her left hand, she began wearing an elastic bandage on that wrist, but she did not seek medical treatment. (Ms. D), employer's business manager and claimant's supervisor, testified that she saw claimant wearing the bandage but that she never inquired about, and claimant never mentioned, an injury. She also said claimant lost no time from work. The claimant acknowledged at the hearing that she never notified her employer about a work-related injury.

Claimant did not look for work after she was terminated but because of worsening pain in her left wrist she saw (Dr. P) on (date of injury). Dr. P's initial impression was bilateral carpal tunnel syndrome, with the left greater than the right; this was confirmed by subsequent tests. She had surgery on her left wrist on October 12, 1992, and stated at the hearing that she needed surgery on her right wrist.

It was claimant's position that (date of injury), was the date she first knew that her problem was work related, although Dr. P's records do not reflect that either he or claimant discussed the relationship of her condition to work. Her treatment with Dr. P was covered by her health insurance, with the first claim being filed on August 19, 1992.

Claimant's position at the hearing and on appeal was that she did not know that workers' compensation insurance would cover her injury, and that she only learned differently after her health coverage under COBRA expired. Sometime thereafter, she called the Commission and filed a claim on May 11, 1993. According to Ms. D, the employer first learned of claimant's workers' compensation claim in July of 1993.

The 1989 Act provides that an employee or a person acting on the employee's behalf shall notify the employer of the injury no later than the 30th day after the date on which (in the case of an occupational disease) the employee knew or should have known that the

injury may be related to the employment. Section 409.001(a)(2). The hearing officer held that the claimant first had such knowledge on (date of injury). The Act further provides that failure to timely notify the employer of an injury relieves the employer and its insurance carrier of liability unless, among other things, the Commission determines that good cause exists for failure to provide notice. Section 409.002(2).

The hearing officer in this case held that the claimant did not have good cause for failure to timely notify her employer, and we hold that the evidence supports this determination. Claimant's inaction during the one-year period following her diagnosis was apparently based upon her misunderstanding of the extent of workers' compensation insurance coverage. However, the Supreme Court has held in an analogous case that a belief that compensation is not payable for a particular injury does not constitute good cause for a delay in filing a claim. *See* Allstate Insurance Co. v. King, 444 S.W.2d 602 (Tex. 1969). *See also* Texas Workers' Compensation Commission Appeal No. 92657, decided January 15, 1993, and cases cited therein.

Our review of the record reveals no error on the part of the hearing officer. We will not reverse the hearing officer's decision where, as here, it is supported by the evidence and is not against the great weight of the evidence. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Alan C. Ernst
Appeals Judge