APPEAL NO. 950061
FILED FEBRUARY 24, 1995

This case returns for review pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) following this panel's decision in Texas Workers' Compensation Commission Appeal No. 941374, decided November 23, 1994. In that case the decision below was reversed and remanded solely to allow the hearing officer to determine the claimant's specific date of injury. The hearing officer stated in her decision on remand that it was unlikely that further testimony would elucidate this issue, and therefore no additional contested case hearing was convened. The hearing officer determined that the date of claimant's injury was _____. The carrier takes this appeal, contending that the issue before the hearing officer was whether the claimant sustained a compensable injury on (subsequent date of injury), and that thus it was inappropriate for the hearing officer to find another date of injury. The claimant responds that the carrier's argument ignores the fact that the claimant was alleging a repetitive trauma injury and that the evidence was sufficient to support a determination that _____, was the date that the claimant first knew or should have known that the disease may be related to the injury.

DECISION

Affirmed.

The facts of this case are set forth in Appeal No. 941374 and will not be repeated here except as necessary to this decision. Briefly, the claimant contended that she developed a condition later diagnosed as thoracic outlet syndrome and that it arose from working at a desk which was tilted forward on a cracked slab and from repetitive lifting and pulling of heavy files. The hearing officer found this injury was compensable. In her decision on remand the hearing officer stated that the evidence showed the claimant realized that her condition could be work related in "_____," which had been the original date of injury found by the hearing officer. Based upon testimony of the claimant and her supervisor placing claimant's knowledge "approximately two or three weeks prior to mid-(month) of 1993," the hearing officer inferred that claimant's actual date of injury was _____.

In its appeal the carrier contends, as it did in its appeal of the original decision, that the hearing officer could not find a date of injury other than the one originally alleged by the claimant and which was contained in the appropriate issue from the benefit review conference (Issue No. 1 was stated as, "Whether Claimant sustained a compensable injury on (subsequent date of injury)"). As we noted in the previous Appeals Panel decision, the date of injury for an occupational disease (including a repetitive trauma injury) is the date on which the employee knew or should have known that the disease may be related to the employment. Section 408.007. In that decision we also wrote:

> The concept of an identifiable date of injury for such disease has been held to be "flexible" in the sense that the limitation period for timely notice begins to run when a claimant, as a reasonable person, recognized the nature, seriousness, and work-related nature of the disease. In addition, this panel has held that it is possible that an employee may know that a physical problem or condition could be work related without verification from a doctor. Whether and when an employee knew or should have known that a physical problem was work related is a question of fact. Moreover, contrary to the carrier's assertion, pleadings, as such, are not required by the 1989 Act and the date of injury alleged does not have to be the date found by the hearing officer, who is charged with considering all the evidence to determine when injury occurs. [Citations omitted.]

Our position remains unchanged as to this issue. In addition, upon review of the record, we find the date of injury as found by the hearing officer to be supported by the evidence and not so against the great weight and preponderance of the evidence as to be manifestly unfair and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The finder of fact may draw reasonable inferences and deductions from the evidence presented and his or her findings may not be disregarded if the record discloses any evidence of probative value in support thereof. Harrison v. Harrison, 597 S.W.2d 477 (Tex. Civ. App.-Tyler 1980, writ ref'd n.r.e.).

The carrier also objects to the hearing officer's findings and conclusions with regard to the other issues in this case. However, as our decision in Appeal No. 941374 made clear, we remanded only on the specific issue of date of injury and had affirmed the remainder of the hearing officer's decision.

The decision and order of the hearing officer are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge