

APPEAL NO. 980303
FILED MARCH 30, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 12, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer.

She determined that the appellant (claimant) did not sustain a compensable injury; that the claimant, without good cause, failed to give timely notice of the claimed injury; and that the claimant did not have disability. The claimant appeals these determinations, expressing her disagreement with them. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant, who was a computer data entry operator, contended that she sustained a compensable bilateral carpal tunnel syndrome (BCTS) injury when she lifted a bucket of sand to prop open a door. It was not disputed that the incident occurred. It was equally clear that the claimant was only alleging a compensable BCTS injury and that the theory of her claim was that a single incident of trauma, not repetitive trauma, caused the BCTS. A separate issue reported out of the benefit review conference (BRC) was the date of injury. The claimant's position at the BRC suggested that the incident occurred on (alleged date of injury). At the CCH she concluded, based on her review of her work attendance records, that the incident happened on _____. The hearing officer concluded that no specific date of injury was established, but that the incident on which the claim is based occurred no later than (alleged date of injury). This conclusion has not been appealed.

According to the claimant, her wrists started hurting, not immediately, but a few days after the incident. She worked through (alleged date of injury). The wrist and arm pain became increasingly worse with other symptoms of migraine headaches, dizziness, and nausea. She called in sick on October 30 and 31, 1995, but did not recall attributing her condition to anything at work. The claimant first sought treatment from a clinic on November 7, 1995. The report of the initial visit reflects complaints of headaches, nausea, pain to both shoulders and chest pain. She testified that at this visit she also complained of wrist pain, but no mention was made of BCTS. In a note of March 29, 1996, Dr. V diagnosed BCTS, but did not state a cause. The claimant returned to work on April 4, 1996, and worked until May 25, 1996, when, she said, her hands hurt so much that she could not continue.

The claimant contended that she first reported her injury on May 25, 1996, and that she "never made the connection" between the BCTS and the bucket lifting incident until then. At this time, she said, she had trouble filling out various forms for short-term,

non-work-related disability and that in discussing these forms with Mr. G, the employer's benefits person, he said her condition was related to the job. She said she did not report the injury earlier because of all her other medical problems. She further testified that she thought her wrist pain was related to her migraine headaches and when she still had the wrist pain after the migraines were controlled, she "made the connection."

The claimant had the burden of proving that she sustained a compensable injury as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). This was essentially a question of fact for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. In this case, the claimant made clear that she was not asserting a repetitive trauma injury. She did not appeal an express finding of fact to this effect. See Finding of Fact No. 42. The hearing officer noted the lack of medical evidence to establish causation and that the BCTS was not distinguished from her other ailments as work related. The claimant said that a Dr. N, whose records were not in evidence, told her the BCTS was caused by her work. The carrier countered that Dr. N only described this as a "possibility." The hearing officer was not persuaded by the evidence that the claimant met her burden of proving the cause of her BCTS. We will reverse a factual determination of a hearing officer only if it is so against the great weight and preponderance of the evidence as to be clearly erroneous and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support the finding of no compensable BCTS injury.

Section 409.002 provides that an employee's failure to give the employer notice of the injury by the 30th day after it occurred relieves the employer and carrier of liability unless the Texas Workers' Compensation Commission (Commission) determines that good cause existed for the failure. The claimant conceded that she did not timely report the injury, but argues that she had good cause for failing to do so. The test for the existence of good cause is that of ordinary prudence, that is, whether the claimant prosecuted the claim with the degree of diligence that an ordinary prudent person would have exercised under the same or similar circumstances. Hawkins v. Safety Casualty Company, 207 S.W.2d 370 (Tex. 1948). The claimant asserts that she had good cause until May 25, 1996, when she reported the injury, because she was not in a clear state of mind, or that the question of cause had not registered with her until then, or that she was too overwhelmed with medical tests and coping with numerous other conditions, not related to her claimed injury, such as depression and migraine headaches. As early as December 20, 1995, the claimant signed a insurance claim form for short-term disability and a medical claim form on May 10, 1996. According to her testimony, portions of these forms were completed by her treating doctor. In any case, to the extent that the claimant engaged herself in completing these forms, the hearing officer could find unpersuasive the claimant's argument that she was too preoccupied with her other medical problems to give this claim timely attention. Insofar as the claimant's argument for good cause is premised on ignorance of the law, we have held that this does not constitute good cause. Texas Workers' Compensation

Commission Appeal No. 961858, decided November 6, 1996. We believe the evidence sufficiently supports the finding of no good cause for the failure to give timely notice, and we decline to reverse that determination.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge