APPEAL NO. 980311
FILED MARCH 31, 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 22, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. She determined that the co-respondent (claimant) sustained a compensable carpal tunnel syndrome (CTS) injury; that the date of injury was _____; that the claimant timely reported the injury; that the claimant had disability from October 7, 1997, through the date of the CCH; that the appellant (carrier 1) did not waive its right to dispute the compensability of this injury; that carrier 1 was liable for workers' compensation benefits for this injury; and that the respondent (carrier 2) was not liable for benefits. Carrier 1 appeals only the determinations of a date of injury and liability, contending that they are not sufficiently supported by the evidence. The claimant and carrier 2 reply that the decision of the hearing officer is correct and should be affirmed. The determinations of the hearing officer that have not been appealed have become final. Section 410.169.

DECISION

Affirmed.

The claimant was a sheet metal worker. Carrier 2 provided workers' compensation insurance coverage for the employer up to April 2, 1997; Carrier 1 provided coverage after April 17, 1997. The gap in coverage was not otherwise explained.

The claimant testified that as early as December 1996 he experienced numbness and tingling in his hands both at work and at home. He said he told his supervisor about the numbness in a casual conversation sometime in January 1997, but did not report that he was claiming a work-related injury. He said he thought maybe the symptoms were caused by arthritis or rheumatism which ran in his family. He never missed time from work, he said, until April 23, 1997, at which time he resigned or was terminated. According to the claimant, the condition with his hands remained essentially the same, but then worsened to the extent that he discussed the situation with his union business agent in June 1997. The claimant said he was told by the business agent that he may have CTS and was advised to call the Texas Workers' Compensation Commission (Commission) and to see a doctor. On _____, he spoke with a Commission employee who told him to report the matter to carrier 1.

Mr. J, an administrator for carrier 1, testified that he first heard from the claimant on _____, about a possible claim and on that same day he was called by Dr. T office to confirm that carrier 1 provided coverage in this case. On July 2, 1997, the claimant had an extended recorded interview with Mr. J which was subsequently

transcribed. In the course of this interview, he stated that he started noticing the problems (his hands falling asleep) during December 1996 while doing his job and that the pain would come and go. In the statement, he said he mentioned to his foreman sometime in January 1997 that he thought he might have CTS. At the CCH, he said he told his supervisor only about numbness, not that it was work-related. The claimant said in the statement that the supervisor told him that he, the supervisor, probably had the same thing and that he, the clamant, was "too scared" to pursue the matter with the employer. The claimant first saw Dr. T on July 11, 1997, and was advised that it was likely he had CTS. A formal diagnosis of CTS followed thereafter.

The claimant in this case alleged an occupational disease in the nature of a repetitive trauma injury. *See* Section 408.011(34). Section 408.007 provides that the date of injury of an occupational disease "is the date on which the employee new or should have known that the disease may be related to the employment." The hearing officer found the date of injury to be _____, based on the testimony of the claimant and Mr. J, that on this date the claimant contacted carrier 1. In making this finding, the hearing officer expressly rejected the claimant's contention that the date of injury should be the date of Dr. T's diagnosis on July 11, 1997. The hearing officer did not discuss whether the claimant knew or should have known before he called carrier 1 that his CTS may be work related, or whether there was some delay between this knowledge and the call to carrier 1.

Pinpointing the date of an occupational disease is an "inexact science" and there is some "flexibility" in establishing this date "between the time a claimant only speculates that an injury is possibly work related and the time when a claimant has hard evidence from medical tests or other consultations that the injury is work-related." Texas Workers' Compensation Commission Appeal No. 941484, decided December 16, 1994. We have also pointed out that the date of an occupational disease need not be as early as the initial manifestation of symptoms, nor as late as a definitive diagnosis by a doctor that an injury is work related. *See* Texas Workers' Compensation Commission Appeal No. 960487, decided April 25, 1996. In its appeal, the carrier argues that the claimant could not identify any new information that would have led him to realize that his CTS may be work related between the time of his complaints in December 1996, his discussion with the supervisor in January 1997 and his conversation in June 1997 with the union business manager who told him to seek help from the Commission. It further asserts that the situation had obviously become pressing enough to discuss with his supervisor and that this, in combination with the experience of pain and numbness at work, should have caused him to realize that his work may have caused his hand problems. These conclusions from the evidence are certainly plausible. However, the date of an occupational disease is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94415, decided May 23, 1994. The hearing officer in her role as fact finder was the sole judge of the weight and credibility of the evidence. It was her responsibility to determine what facts had been established. 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 wrong 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). As noted above, the evidence on the date of injury issue was subject to varying inferences and conclusions about when the claimant should have known that his condition may have been work related and not an ordinary disease of life. Applying our standard of review to the facts of this case, we find the evidence deemed credible by the hearing officer sufficient to support the decision of the hearing officer that the date of injury was _____, and that carrier 1 was the insurer on this date.

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

Alan C. Ernst
Appeals Judge

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge