

APPEAL NO. 990038

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 15, 1998. He (hearing officer) determined that the respondent (claimant) sustained an occupational disease (right carpal tunnel syndrome); that the date of injury was \_\_\_\_\_ that the claimant timely reported the injury; and that the claimant had disability from May 13 to November 12, 1998. The appellant (carrier) appeals only the determination that disability began on May 13, 1998, arguing legal error in finding disability before the date of injury. The carrier seeks a remand for consistent findings of the date of injury and the date disability began. The ending date of disability has not been appealed. In her response, the claimant agrees that disability cannot occur before the date of injury and urges that we reverse the hearing officer's determination of disability and render a decision that the claimant had disability from July 29 to November 12, 1998. The unappealed determinations of the hearing officer have become final. Section 410.169.

DECISION

Reversed and a new decision rendered on the appealed issue.

In an occupational disease case the date of 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 Texas Workers' Compensation Commission Appeal No. 950521, decided May 18, 1995, which was an occupational disease case based on repetitive trauma, we concluded that the 1989 Act provides for income benefits no earlier than the date of injury. Consequently, even if disability were found for a period prior to the date of injury, income benefits would not be payable for that period of time.

Mindful of the distinction between disability as defined in Section 401.011(16) and entitlement to temporary income benefits (TIBS) as set out in Section 408.101, we also note that the claimant specifically agrees with the carrier that disability should be from July 29, 1998, to November 12, 1998. Under these circumstances a remand would serve no useful purpose. We reverse so much of the decision of the hearing officer that the claimant had disability from May 13 to November 12, 1998, and render a decision that the claimant had disability from July 29 to November 12, 1998. TIBS are due for this period as otherwise provided by 1989 Act and rules of the Texas Workers' Compensation Commission. The remainder of the decision has become final.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Elaine M. Chaney  
Appeals Judge