APPEAL NO. 990223

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 982525, decided December 9, 1998. A hearing on remand was held on January 6, 1999. With respect to the issue before him on remand, the hearing officer determined that the appellant (self-insured) waived its right to contest compensability of the bilateral carpal tunnel syndrome (CTS) injury by failing to dispute that injury within 60 days from the date it had its first written notice thereof. In its appeal, the self-insured argues that the hearing officer's determination that it waived the right to contest the compensability of the bilateral CTS is against the great weight and preponderance of the evidence. The self-insured also contends that the hearing officer erred in determining that the bilateral CTS injury is compensable as a matter of law, citing Continental Cas. Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.). In her response, the respondent (claimant) urges affirmance.

DECISION

Affirmed.

The facts in this case are contained in our decision in Appeal No. 982525 and will not be repeated here, except as necessary to put the decision in context. It is undisputed that the claimant sustained a compensable injury to her right shoulder and right thumb on _____. On December 2, 1997, the claimant underwent EMG testing. In progress notes of December 5, 1997, Dr. S, the claimant's treating doctor for her January 1997 compensable injury, states that the EMG testing revealed bilateral CTS.

At the hearing on remand, as she had at the initial hearing, the claimant testified that on December 18, 1997, she wrote a letter to Ms. J, the adjuster with the self-insured's third-party administrator assigned to the claimant's claim. In that letter, the claimant stated that she had been diagnosed with bilateral CTS on December 2, 1997. The December 18, 1997, letter also indicates that the claimant was forwarding her response to the self-insured's request to be examined by Dr. F, stating that she would not present herself to Dr. F for examination and an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41). The TWCC-41 claims a repetitive trauma occupational disease injury, bilateral CTS, with a date of injury of _____. The claimant testified that she sent the December 18, 1997, letter, her response to the request to be examined by Dr. F, and the TWCC-41 to Ms. J at an address, which Ms. J acknowledged as accurate, by certified mail on December 29, 1997. The claimant introduced a copy of the return receipt card, showing delivery to the self-insured on December 30, 1997. The return receipt card bears the initials "TB" or "JB." In addition, the other side of the return receipt card is postmarked December 30, 1997, and is addressed to the claimant.

At the first hearing in this case, Ms. J testified that she did not receive the certified mail from the claimant and that she did not recognize the initials on the green card, noting that ML signs for her employer's certified mail. She maintained that she received her first

written notice that the claimant was alleging a bilateral CTS injury with a December 2, 1997, date of injury, on March 25, 1998, when she received a report from Dr. S stating that the claimant's bilateral CTS was a result of repetitively traumatic activities the claimant performed at work. On April 1, 1998, the self-insured filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) with the field office of the Texas Workers' Compensation Commission (Commission), contesting the compensability of the bilateral CTS injury and asserting that the claimant did not timely report her alleged injury to her employer.

The hearing officer determined that the bilateral CTS injury is compensable as a matter of law, because the carrier did not timely contest the compensability of the injury in accordance with Section 409.021. On remand, the hearing officer found that the self-insured received its first written notice of the bilateral CTS injury on December 30, 1997, when its third-party administrator received the TWCC-41, alleging a bilateral CTS injury with a date of injury of December 2, 1997. On appeal, as it did at the hearing, the self-insured asserts that in accordance with the testimony of Ms. J, it did not receive its first written notice of the bilateral CTS injury until it received a medical report from Dr. S on March 25, 1998. It was for the hearing officer, as the sole judge of the relevance, materiality, weight, and credibility of the evidence under Section 410.165, to resolve the conflicts and inconsistencies in the testimony and evidence concerning the date on which the self-insured received its first written notice of the claimant's claim for a bilateral CTS injury. The hearing officer was acting within his province as the fact finder in crediting the claimant's testimony that she mailed the TWCC-41 to the self-insured's third-party administrator by certified mail that was received on December 30, 1997, as is evidenced by the return receipt card. Our review of the record does not demonstrate that the hearing officer's determination that the self-insured received its first written notice of the claimed bilateral CTS injury on December 30, 1997, when it received the TWCC-41 is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Given our affirmance of that determination, we likewise affirm the hearing officer's determination that the self-insured waived its right to contest the compensability of the bilateral CTS because its TWCC-21, which was filed with the Commission on April 1, 1998, was filed beyond the 60-day period provided in Section 409.021(c).

The self-insured also argues that the bilateral CTS injury is not compensable as a matter of law, citing Williamson, *supra*. The self-insured's reliance on Williamson is misplaced. We have previously recognized that Williamson is limited to situations where there is a determination that the claimant did not have an injury, that is, no damage or harm to the physical structure of the body, as opposed to cases where, as here, there is an injury, bilateral CTS, which was determined by the hearing officer not to be causally related to the claimant's employment. Texas Workers' Compensation Commission Appeal No. 990135, decided March 10, 1999; Texas Workers' Compensation Commission Appeal No. 982446, decided December 2, 1998 (Unpublished); and Texas Workers' Compensation Commission Appeal No. 981847, decided September 25, 1998. Thus, in affirming the hearing officer's determination that the self-insured did not timely contest compensability of

the claimant's bilateral CTS injury, we likewise affirm his determination that that injury has become compensable as a matter of law.

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Alan C. Ernst
Appeals Judge