APPEAL NO. 990383

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 27, 1999, with the record closing on February 3, 1999. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury in the form of an occupational disease, the date of injury, and whether the claimant timely reported the injury to his employer. The hearing officer determined that the claimant did sustain a compensable occupational disease injury, that the date of injury is _____, and that the claimant timely reported the injury to his employer. The appellant (carrier) appeals, urging that the evidence is insufficient to support the pertinent findings and conclusions of the hearing officer on all three issues, and that the decision should be reversed. The claimant asserts that there is sufficient evidence to support the decision and asks that it be affirmed.

DECISION

Affirmed.

Initially, the carrier stated during the CCH that it was not going to spend any significant time on the issue of whether the alleged injury is compensable since it suspected that that determination would be made based on the medical evidence. The carrier based its defense basically upon the date of injury and that claimant's notice of injury was untimely. We have reviewed the medical and other evidence and conclude that it is clearly sufficient to support the determination that the claimant sustained an injury in the course and scope of employment in the form of repetitive physical trauma to his hands and arms (bilateral carpal tunnel syndrome (CTS) and symptoms of cubital tunnel syndrome). Thus, the hearing officer's finding of an injury in the course and scope of employment is affirmed.

The claimant worked as an aircraft mechanic in the (Service), subsequently left the service, went to law school and started practicing as a law clerk with the firm representing him in this case, and then subsequently went to work as an aircraft mechanic with the employer starting in January 1998. His job consisted of removing screws (up to 100 per panel) from aircraft paneling which required manual repetitive activity and pressure up to 30-40 inch pound of torque. He stated that when working in the Service he would notice his hands and arms being sore from mechanic duties but that it would quickly pass when he rested. He had been sedentary during law school and when he was a legal clerk for the firm now representing him. Because he had been sedentary for a long period, he thought that he was just getting back into shape when he noticed symptoms of soreness and some numbness and tingling in his hands but they would quickly get better when he rested. He did not think there was anything serious going on. However, in June 1998 the claimant states his thumb went numb and stayed numb, that grasping anything made his hand go numb, that this was different from what he had previously experienced, and that, at that time, he first thought he had a work-related injury and reported it to the employer's coordinator within several days. He saw Dr. S in July, and a report of the visit diagnosed bilateral CTS (a possible problem in the cubital areas came up in later reports). Dr. S

mentions in his report the claimant's symptoms began again in February and March 1998 when he went back to aircraft mechanic work and that it became progressively worse up to the middle of June.

The hearing officer determined that the date of injury, the date the claimant knew or should have know he had a work-related injury (Section 408.007), was _____, when the claimant stated his left thumb became, and stayed, numb, which had not happened before, and at which time the claimant realized he had an occupational disease that may be related to his employment. The hearing officer also found that the claimant notified his employer on June 15, 1998, that he had an injury to his upper extremities that was related to his work. The carrier urges that the great weight of the evidence shows that the claimant knew or should have known in February and March that his symptoms may be related to his employment and that he was thus untimely in his June 15, 1998, notice to his employer. Carrier argues that with the claimant's experience with the law firm and workers' compensation law, "it simply cannot be reasonably believed that this claimant, with the benefit of special knowledge, did not realize in early 1998 that he may have had a job related condition." (Although not the subject of a finding, the hearing officer notes in his discussion that even if a date of injury were established earlier, the claimant could still have good cause for not timely notifying because of trivialization.) There was nothing to indicate the claimant had any specialized medical training.

When a claimant knew or should have known that an occupational injury may be related to his employment, the date of injury, is a question of fact basically left to the determination of the hearing officer based on the evidence before him. Texas Workers' Compensation Commission Appeal No. 951791, decided December 13, 1995; Texas Workers' Compensation Commission Appeal No. 951666, decided November 20, 1995. Clearly, the standard of when a person "knew or should have known" can be problematic and is generally rather case specific. Texas Workers' Compensation Commission Appeal No. 971298, decided August 18, 1997. The hearing officer could accept and believe the claimant's testimony that he did not know he had a work-related injury until June because of the difference in symptoms and that they did not go away as they had in the past. He stated his belief that he thought it was just soreness from a prior sedentary lifestyle and that the soreness and symptoms quickly abated until the experience he had in June. While the evidence might give rise to inferences different from those found most reasonable by the hearing officer, this is not a sound basis for reversing his findings of fact and conclusions of law. Salazar, *et al.* v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). Only were we to conclude, which we do not here, from our review of the evidence that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to disturb the decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992.

Accordingly, the decision and order are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge