

APPEAL NO. 990442

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 2, 1999, a hearing was held. She determined that the appellant's (claimant) date of injury to his hands, wrists, and arms was on (prior date of injury), that the injury was work related, that his notice to the employer was untimely without good cause for its lateness, that his claim was not timely without good cause for lateness, and that claimant's assertion of a workers' compensation injury was not barred by an election of remedies. Claimant asserts that his date of injury is (claimant's alleged date of injury), and that he told his employer of the injury the next day, on (day after claimant's alleged date of injury). He adds that on (prior date of injury), he sought medical care for his knee, that his wrists were mentioned in passing, and that he was not told he had a work-related injury at that time. In that regard, he states that if he knew he had a workers' compensation injury in 1996, he would have followed up on it. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked as an electrician for (employer) on (prior date of injury), on _____, and on (claimant's alleged date of injury). He testified that his injury to his hands and wrists occurred on (claimant's alleged date of injury), stating that "it was never as common as it was until I saw Dr. C back in May." He testified that he realized his symptoms "may" be caused by his job when Dr. C "referred me to an actual workman's comp doctor." Claimant added that his symptoms occur when working with "the heavy pipe or the big wires or hundreds of thousands of wire terminations a day." On cross-examination claimant agreed that he worked at the (PAC) in "96, 97," which involved "big wire termination," which is what causes soreness in his hands. He said that he saw Dr. R in (prior date of injury) for his knee. Claimant agreed that when he gave a recorded statement, he said that his date of injury was in _____. He also agreed that the problems he had with his hands and wrists in (prior date of injury) occurred only while he was working. Claimant's statement is dated May 29, 1998. In that statement claimant was asked when he started having problems with his wrists; he replied:

The major part of it was on the big wire termination we were doing at the (PAC) when I was working for R. Uh, I believe it the first couple of months of, this is '98, so it would have been '97 I guess. A big wire termination, and wire pulling and pipe bending and that kind of thing.

He then said that he saw a doctor, he thought, in _____ in regard to the pain and the fact that "some days . . . my hands wouldn't, my wrists wouldn't let me do it" in referring to his work. He added that when he went to the doctor at this time he knew that the "type

of strain" was caused by the job. He also said that the type of problem that Dr. C found was the same problem he was having when he got medical care in 1997.

Medical records of Dr. K dated June 4, 1998 (on referral from Dr. C), provide a history that begins:

[Claimant] is a 33 year old single electrician. In _____ while working . . . he developed the onset of numbness and tingling in the first three digits of both hands.

In Dr. K's assessment, at the end of this report the words, "excessive hand manipulation during his work as an electrician in February of 1997 and has continued . . ." were used. Both quoted phrases were typed. In both quoted phrases, the "_____" and the "February of 1997" are crossed out with one stroke of a pen and beside the crossed-out portion, in handwriting is "(claimant's alleged date of injury)" and "(claimant's alleged date of injury)" with the initials "JK" beside each. Dr. K's first name begins with a J.

Dr. R's records show several pages devoted to (prior date of injury), and one page of notes devoted to (prior date of injury), plus other dates that follow in October 1996. The page containing references to several dates only states for September 30th, "need R wrist, L knee needs xray." On a page devoted to September 30th, Dr. R shows the chief complaint to be pain in the left knee. Dr. R then says, "also complains of pain - both wrists, R & L with paresthesia 1st three fingers of both hands. Works as a electrician current project involves bending large gauge wire. No weakness." A separate page contains the report of physical examination in which Dr. R again noted the left knee and also said, "Tinel's sign in both wrists." His "assessment" reversed the order previously shown between the knee and the wrists and said "carpal tunnel syndrome [CTS]. Internal Derangement L knee."

Dr. C does state that he first saw claimant on (claimant's alleged date of injury), and, noting Tinel and Phalen signs wrote that he "suspect[ed] [CTS]"; he referred claimant to Dr. K. Claimant's Notice of Injury . . . and Claim is dated July 7, 1998.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The question of date of injury is basically one of fact that the hearing officer is to determine. See Texas Workers' Compensation Commission Appeal No. 941484, decided December 16, 1994. The hearing officer correctly considered the date that "claimant knew or should have known that his bilateral [CTS] may be related to the repetitive work activities . . ." (emphasis added), not when the claimant knew that his injury was related to the work. See Section 408.007. She could give significant weight to the medical records showing claimant's complaint of (prior date of injury), Dr. R's testing of claimant's hands and wrists, and his belief that claimant had CTS, notwithstanding that claimant testified he had not seen that record until it was provided at the time of this dispute. While claimant also states that he was not told he had a work-related injury in

1996, Texas Workers' Compensation Commission Appeal No. 92559, decided December 3, 1992, stated that a date of injury in a repetitious physical trauma case may be found without medical evidence. The evidence sufficiently supports the determination of the date of injury as (prior date of injury). (We note that had the hearing officer, as fact finder, determined that the date of injury occurred in _____, as indicated by Dr. K and by claimant's statement, both notice to the employer and the filing of a claim would still have been untimely provided.)

The hearing officer also found that claimant did report his injury on (day after claimant's alleged date of injury), but that he did not have good cause for delaying his notice until that time from (prior date of injury). This determination is also a factual one which the hearing officer makes; the record does not show that she abused her discretion in reaching this decision, especially in view of claimant's own evidence that he had sought medical treatment in _____ and Dr. K's reference to his condition having "continued" since it began. As fact finder, the hearing officer could view Dr. K's note as showing not that the condition began in May 1998, but in _____, as was crossed out in two places.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge