APPEAL NO. 990577

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 February 10, 1999. The issues at the CCH, where two different injuries and claims were consolidated for the hearing were whether the respondent (claimant) sustained a compensable injury (occupational disease), what was the date of injury of the compensable injury, whether respondents (carrier 1) or (carrier 2) provided workers' compensation insurance for (employer 1) on (date of injury No. 1), and whether the claimant timely reported an injury to the employer. The hearing officer determined that the claimant sustained a right cubital tunnel syndrome compensable injury, that the date of injury is (date of injury No. 2) (the date the claimant knew or should have known that her disease may be related to the employment); that carrier 2 provided workers' compensation insurance for (employer 2) on (date of injury No. 2); that carrier 1 provided workers' compensation coverage for employer 1 on (date of injury No. 1); that the claimant gave timely notice of injury to employer 2, the employer at the time of last injurious exposure. He ordered that carrier 2 was liable for benefits and that carrier 1 was not liable. Carrier 2 appeals several findings of fact and conclusions of law and urges that the decision and order of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly unjust and wrong as a matter of law. Carrier 2 essentially urges that the date of injury was (date of injury No. 1), and not (date of injury No. 2), and thus it was not liable for benefits as it did not have coverage on (date of injury No. 1). The claimant responds that findings of fact, conclusions of law and the decision of the hearing officer are correct and supported by sufficient evidence. No response was received from carrier 1.

DECISION

Affirmed.

The claimant operated a computer regularly (CAD operator) while in the employ of employer 1 and testified that she sustained a right-hand carpel tunnel syndrome (CTS) injury in (prior date of injury) and had surgery in September 1996. She returned to work the end of October 1996 and apparently developed left-hand CTS for which she had surgery in May 1998, at which time she stopped working. She testified that, after she returned to work in October 1996, she had pain in her right hand which continued to worsen and which she related to her surgery. She called her doctor, Dr. B, several times and he told her it was part of the healing process. She called the doctor's office on (date of injury No. 1), and told them her arm was really hurting all the way up to the elbow with burning sensations in her arm. She went to Dr. B on June 24, 1997, and states that the doctor "had her in and out in five minutes" and that she was left with the impression that her CTS had possibly returned. She was given a pad to wear but no tests were done. Because she was in great pain, she subsequently went to another doctor, Dr. BR, in August 1997 and underwent an EMG in October. Dr. BR did not show or discuss the test results but told her that he thought it might be her elbow and that he would put her in a splint for two months. He did not relate

her condition to any work activity. She stated that Dr. B had received the test results and was still her treating doctor. When she saw him on (date of injury No. 2), he told her that she had cubital tunnel syndrome from repetitive activity at work. Up to this time, the claimant testified she thought that her problems were related to her original right-hand CTS and did not know she had a new injury that was work-related.

In the meantime, the claimant left employer 1 and started working for employer 2 on July 15, 1997, again performing regular computer operations (CAD operator). The claimant testified that, after Dr. B informed her of the new cubital tunnel syndrome injury on (date of injury No. 2), she informed her supervisor at employer 2 on December 15, 1997, that she had an on-the-job injury. The claimant testified that the adjustor for carrier 2 told her that she in fact had a (date of injury No. 1), injury and that she needed to report it to employer 1, which the claimant did. From this conversation with the adjustor, the claimant stated, she then thought her cubital tunnel syndrome injury occurred on (date of injury No. 1), and that she called employer 1 in January 1998 to report the injury.

The hearing officer found that the claimant was acting as a reasonably prudent person on (date of injury No. 1), in believing that the symptoms she reported to Dr. B were related to the right CTS injury (no indication that the right CTS was ever contested) and had no reason to believe that her symptoms were anything else, and that (date of injury No. 2) (when Dr. B diagnosed cubital tunnel syndrome) was the first time the claimant knew or should have known as a reasonably prudent person that her symptoms may be related to her work and was an injury other that her right-hand CTS. He also found that the claimant's work activities at both employers lead to the cubital tunnel syndrome and that she was last injuriously exposed at employer 2. Regarding notice, he found the claimant gave timely notice to employer 2 on December 15, 1997.

Carrier 2 urges that the hearing officer's determination that the date of injury was (date of injury No. 2), is against the great weight of the evidence and that the correct date of injury is (date of injury No. 1), while the claimant was working for an employer for which it did not have coverage. Carrier 2 points out that the claimant complained of elbow pain on (date of injury No. 1), that she reported and stated (albeit after her discussion with its adjustor) that her injury date was (date of injury No. 1), and that she knew or should have known at that time that her condition may be work related. Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. It is clear to us from the hearing officer's decision that he was fully aware of the statutory provisions and that he applied them to the evidence presented. We cannot conclude that the findings and inferences he drew from the evidence find no probative support in the evidence or that his determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. It is apparent that the first diagnosis of the injury under review was rendered on (date of injury No. 2), and the claimant states that, up to the time

she was told she has cubital tunnel syndrome, she thought her condition related to the right CTS. As carrier 2 argues, and we agree, the date of injury for an occupational disease does not require a "concrete diagnosis." Texas Workers' Compensation Commission Appeal No. 950411, decided May 2, 1995. However, while a "concrete diagnosis" is not necessary, it does not follow that a claimant necessarily knew or should have known that the condition may be related to the employment before the diagnosis; particularly under the circumstances presented here, medical knowledge will not be imputed to the claimant. Texas Workers' Compensation Commission Appeal No. 982114, decided October 14, 1998. *See also* Texas Workers' Compensation Commission Appeal No. 972387, decided January 5, 1998. While there was some conflict in the evidence regarding the date of injury given the claimant's prehearing statement, testimony, and explanation at the hearing, this was a matter for the hearing officer to resolve. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ).

Find sufficient evidence to support the determinations of the hearing officer and no prejudicial error, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge