

APPEAL NO. 990841

Following a contested case hearing held on March 29, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury in the form of an occupational disease to her right wrist on \_\_\_\_\_; that the date of the injury is \_\_\_\_\_; and that claimant provided the employer with timely notice of the injury. The appellant (carrier) has appealed three findings of fact for insufficient support in the evidence. The file does not contain a response from claimant.

DECISION

Affirmed.

The parties stipulated that on February 11, 1998, claimant worked for (employer). Claimant testified that she had been employed by the employer as a telephone operator since August 1997; that her job, operating a "21 second unit," required her to take telephone calls one after another and, apparently, to do some data entry; and that she averaged approximately 800 calls per shift when she worked full time. She further stated that she is left-handed; that she sustained a carpal tunnel syndrome (CTS) injury to her left wrist with a date of injury of (prior date of injury); that she was treated by Dr. S, who on February 11, 1998, released her to return to work at light duty, namely, working a four-hour shift using only her right hand; and that by \_\_\_\_\_, she began to experience the same symptoms in her right wrist and so advised her unit manager, Mr. P. Claimant said she worked until March 13, 1998, when her right wrist symptoms got so bad she could not continue, and that she next was treated by Dr. RB.

Mr. P testified that claimant reported an injury to her left wrist in March 1998 but he did not recall the date. He further stated that she returned to work part time after the injury and that he did not recall claimant reporting an injury to her right wrist. He estimated that she took between 300 and 400 calls during the four-hour shifts. Claimant said on cross-examination that she took about 250 calls per hour.

While Dr. RB's March 12, 1998, Initial Medical Report (TWCC-61) refers only to claimant's left wrist CTS symptoms and treatment, his March 26, 1998, Specific and Subsequent Medical Report (TWCC-64) states that claimant "is having similar symptoms on the right" and would be referred for electrodiagnostic testing to rule out CTS on the right. Dr. RB's TWCC-64 of May 7, 1998, states that claimant has positive Phalen's and Tinel's bilaterally and "has the same patho-mechanics with over use and tendinitis in both hands." Dr. RB reported on July 2, 1998, that he believes that claimant's right CTS is related to her work activities as is her left CTS and that, having failed conservative care, she is to be scheduled for a carpal tunnel release on the left.

On September 24, 1998, Dr. JB, who examined claimant for the carrier to determine if she had reached maximum medical improvement and had impairment from her left CTS,

also answered certain questions. He stated that "[i]t is probable that the patient's mild right [CTS] are a result of her repetitive activities performed at work which were initially reported on (prior date of injury)." He further stated that claimant discontinued her employment on March 13, 1998, and reported her similar right upper extremity findings on or about April 16, 1998, and that, since she was off work for about one month before the right-side symptoms occurred, he felt her right-side symptoms are not work related. He iterated the latter opinion in an October 29, 1998, report.

In its closing argument, the carrier stated that it had disputed claimant's right wrist injury for the reason that she did not report it until April 16, 1998, when she had been off work for a month, apparently referring to claimant's first written report of her right side CTS injury. The carrier introduced an Employer's First Report of Injury or Illness (TWCC-1), dated "(prior date of injury)," which reflects that claimant's left wrist injury was reported on "(prior date of injury)" and assigned that date as the date of the injury. Another TWCC-1 introduced by the carrier, dated "4-16-98," reflects a right wrist injury with both the date of injury and date reported shown as "4-16-98."

Not appealed are findings that on February 11, 1998, claimant returned to work on a light-duty basis due to an injury of CTS to her left hand and that on that date she began working with her right hand performing repetitive-type work. The carrier does appeal findings that claimant began experiencing symptoms to her right hand and on \_\_\_\_\_, notified her employer that she had the same injury to the right wrist as she did with her left wrist; that on \_\_\_\_\_, claimant knew that her right-hand injury was a result of the work she was performing and she notified her employer of the injury; and that claimant notified her employer of an injury to her right wrist within 30 days from the date she knew her injury was work related.

Whether claimant sustained an occupational disease (repetitive trauma) injury to her right wrist in the course and scope of her employment, the date of such injury, and whether she timely notified the employer of the injury (Sections 408.007 and 409.001) presented the hearing officer with questions of fact to resolve. Claimant had the burden of proof on these disputed issues by a preponderance of the evidence. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)) and determines what facts have been established by the conflicting evidence (St. Paul Fire & Marine Insurance company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.)). We are satisfied that the evidence is sufficient to support the appealed findings.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge