APPEAL NO. 991080

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On April 23, 1999, a contested case hearing (CCH) was held. With respect to the three issues before her, the hearing officer determined that appellant (claimant) sustained a repetitive trauma occupational disease (bilateral carpal tunnel syndrome (CTS)) in the course and scope of her employment; that the date of injury, pursuant to Section 408.007, is (date claimant first learned that her injury was related to her employment); and that the respondent (carrier) is relieved of liability under Section 409.002 because of claimant's failure to timely report the injury to her employer pursuant to Section 409.001. The findings that claimant sustained an occupational disease have not been appealed and have become final.

Claimant appeals the findings relating to the date of injury and the timely reporting. As was the case at the CCH, claimant contends both that she reported pain and numbness in her hands and that she believed it was from working on the computer and calculator on (date claimant first learned that her injury was related to her employment), to her then supervisor and that the date of injury was _____, when (Dr. L) told her that her problem was CTS. Claimant requests that we reverse the hearing officer's decision on these points and render a decision in her favor. Carrier responds, urging affirmance.

DECISION

Affirmed.

Claimant was employed as a tax assessor-collector for the employer school district. Claimant testified regarding her duties calculating and collecting taxes which required the frequent use of a calculator and computer keyboard. Claimant testified that she began to feel pain and numbness in her hands and wrists during tax season in December 1995. Claimant testified that she thought the pain might be caused by arthritis and, on (date claimant first learned that her injury was related to her employment), she told her then supervisor, (Mr. N), that she was going to the doctor because of pain in her hands and wrists from working on the calculator and computer. (Mr. N, both in a transcribed recorded statement and sworn affidavit, stated that he did "not recall [claimant] ever mentioning to me that she had injured her wrist or was having any problems with her wrist which were caused by her employment." Mr. N no longer works for the employer school district.)

Claimant sought treatment with (Dr. C) on (date claimant first learned that her injury was related to her employment), for right hand pain. In a brief handwritten note of that date, Dr. C notes pain in the right hand "using calculators." Claimant was referred to Dr. (Dr. ML) and in another, largely illegible note, dated February 1st, Dr. C notes "? CTS."

Claimant testified that Dr. C only told her that she had a "pinched nerve." Dr. ML, in a report dated February 1, 1996, notes EMG testing and has an impression:

> Abnormal Nerve Conduction Study with minimally abnormal EMG of both upper extremities. Findings are consistent with moderate bilateral [CTS], right side more severe than left.

Claimant testified that Dr. ML did not discuss those findings with her. In a handwritten chart note dated March 31, 1997, (Dr. R), apparently claimant's regular doctor, notes that claimant "wants to speak to Dr. about getting referral for hand surgery." Claimant was eventually referred to Dr. L, who, in notes dated April 3 and 19, 1997, diagnosed bilateral CTS with "internal derangement both wrists." In another note dated _____, Dr. L comments:

> In my opinion this patient has both internal derangement of the wrist with torn triangular fibrocartilage. Also [CTS]. Surgery is recommended. Patient will check with her employer. IT [sic] is my opinion the problems are due to repetitious injury at work due to her type of work and likely to be treated under workers' comp.

Claimant contends this is when she first knew that her injury was work related. Claimant reported the injury to her employer on June 24, 1997.

The hearing officer made a finding that claimant discussed the likely cause of her CTS with Dr. C in January 1996 and with Dr. ML in February 1996. That finding is supported by claimant's testimony. Claimant contends, however, that she did not know for sure her pain was work related. The hearing officer, in her Statement of the Evidence (discussion), commented:

> Claimant credibly established that she initially believed her wrist and hand symptoms to be arthritic in nature. However, a review of the medical evidence established that Claimant and [Dr. C] clearly discussed Claimant's symptoms in light of her employment duties. Claimant admitted that [Dr. C] told her that her condition could have resulted from her employment. Her reliance on [Dr. L's] opinion of causation to trigger her reporting duty was misplaced. [Dr. L's] opinion is not stated in more certain terms than the possible causation of which she was already aware in January, 1996. Furthermore, the standard is not when she definitively knew of the causal connection between the injury and her employment, but rather, when a reasonable person under similar circumstances should have known of the connection of the causal relationship between her CTS and her employment. Because Claimant waited over one year until she was certain in June, 1997 to report her injury to Employer, Carrier is relieved of liability.

Section 401.011(34) defines occupational disease as including repetitive trauma injuries. The date of injury for an occupational disease is the date the employee knew or should have known that the disease may be related to the employment. Section 408.007. The date of injury, when claimant knew or should have known the bilateral CTS may be related to the employment, is generally a question of fact for the hearing officer to resolve. In this case, the hearing officer, based on claimant's testimony, found that claimant had talked with Dr. C and Dr. ML in January and February 1996 about her use of a calculator and computer. The hearing officer then found that a reasonable person would have been expected to understand in January (or February) 1996 that her wrist symptoms resulted from repetitious use of a calculator and computer keyboard. Portions of claimant's testimony support those findings. The hearing officer apparently did not believe claimant's contention that she reported the work-related pain to Mr. N on January 17, 1996. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). In that the hearing officer's finding of a date of injury, as defined in Section 408.007, on (date claimant first learned that her injury was related to her employment), is supported by the evidence, it follows that claimant did not timely report the injury within 30 days of that date.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge