

APPEAL NO. 991392

These appeals arise pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 20, 1999, a hearing was held. She (hearing officer) determined that appellant (claimant) did sustain a compensable injury to both wrists/forearms (occupational disease) but did not give timely notice after her date of injury, which was _____; she also found that claimant did not sustain a compensable injury to her neck, shoulders, or other parts of the head and did not have disability. Claimant asserts that her date of injury was not _____, that she timely reported her injury in May 1998, and that her neck, shoulders and other head problems are work injuries; she also commented about the the hearing officer's Statement of Evidence. Respondent (carrier) asserted that a finding of fact and conclusion of law determining that claimant sustained an injury to her hands and wrists at work is not supported by medical evidence. Carrier responded to claimant's appeal by stating that matters of notice, date of injury, and noncompensability of other injuries should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) for over 20 years. During that period she worked as a secretary and also as a receptionist. She said that all her typing since beginning work in 1976 was at a computer, not a typewriter. Claimant testified to taking many telephone calls each day and then typing various information into a computer. She described the table on which the computer sat as too high, said the angle of the screen was incorrect, and also stated that she had to reach and extend to use a mouse. She had wrist problems for which she had asked, and received, splints from employer in July 1997. Claimant also testified that she had pain in her wrists "going into the third year." She maintained, however, that there had been some question of arthritis and she did not know what she had so did not know that her problem may be related to the work until May 1998, when, she said, she received the diagnosis of carpal tunnel syndrome (CTS).

Claimant also testified that she had neck and shoulder problems which she attributed to her work with a telephone and computer. She attributed her scalp, ear, and teeth problems to repetitive motions also, but in addition said there was a stress component involved in these, saying that her work was stressful.

As in most cases in which there is a question of date of injury, there is more than one date upon which a date of injury may be identified. Claimant's first notice of injury said that she first knew that her problem may be related to work in January 1998; she then changed her notice to show this date to be in May 1998. Claimant said she gave notice to her supervisor in May 1998, but she testified, when asked what she said, that the supervisor knew certain things about her operation and did not fully specify that she told him her work was causing the injury. The hearing officer's determination that claimant gave notice when she provided her written notice of injury in July 1998, rather than in May 1998,

is sufficiently supported by the evidence. In addition, claimant chose to record various conversations with doctors and other employees, and transcripts of those conversations were admitted into evidence. A recorded conversation between claimant and her supervisor in May 1998 focused on various medical care; while claimant mentioned that her hands were swollen after some use of the computer that day, the conversation could be reasonably interpreted to indicate questions being raised as to what was happening and as to limits placed on her ability to work rather than notice of a work injury. In addition, a statement claimant gave in August 1998 indicated that claimant gave notice to the same supervisor in January 1998.

In that August 1998 statement, claimant also said that her injury, which she said was CTS, was diagnosed in April 1998, not May. In a series of questions, claimant also said she had no testing of her hand and no complaints about her hand prior to January 1998.

A medical record from Dr. C, dated _____, said that claimant presented with diarrhea, hand pain, back pain, insomnia, chest pain, and headaches. Dr. C noted pain in "both her hands with numbness and swelling and is worse in the hand that uses the mouse with the most which is her right hand." One of Dr. C's assessments was "forearm overuse syndrome." The hearing officer shows in her Discussion that she interpreted this note as showing that the doctor diagnosed an overuse syndrome "from using the mouse." This inference is reasonable; while claimant states in her appeal that she did not receive a copy of this note until April 1999, she did not testify to that fact at the hearing. A claimant may be found to have known that an injury may be related to work without any doctor's diagnosis or opinion as to causation. See Texas Workers' Compensation Commission Appeal No. 92559, decided December 3, 1992. The determination that the date of injury was _____, was sufficiently supported by the evidence.

The hearing officer also commented in her Statement of Evidence about claimant's inconsistency, mentioning that her recorded statement from August 1998 showed hand pain for six years; while a history of hand pain for six years is not found in that statement, the hearing officer also pointed out that claimant in the August 1998 statement said that she had no testing for her hands prior to January 1998, "which is untrue." (The record includes an EMG dated July 18, 1997, ordered because of "numbness of the right hand" for a period of months, in addition to the _____, note of Dr. C.)

With claimant's "inconsistency" in her testimony and statement, the hearing officer then considered that the evidence did not show spondylosis and degenerative changes in claimant's neck (as reported by a myelogram and MRI provided in March 1999) were caused by the work. She accurately stated in her first Finding of Fact No. 8 that while claimant has abnormalities in her cervical spine, the evidence, including that of Dr. C, does not show a causal connection to her work. The determination that no injury to the neck, shoulders, or parts of the head were work related is sufficiently supported by the evidence.

The evidence concerning the determination that claimant's hands and wrists were injured at work was conflicting. The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. We note that while the hearing officer

made a finding of fact identifying CTS, her Statement of Evidence listed a July 1997 and a May 1998 EMG as showing normality. A more accurate assessment of the evidence was also included in the Statement of Evidence when the hearing officer said:

The consensus is that claimant has bilateral hand damage as a result of her work duties while working for employer.

One of the medical reports cited for the above was that of Dr. C, which, on February 20, 1999, said that in his opinion, "your right upper extremity pain was almost definitely work-related and was likely to be [CTS] involving the hands and wrists." In that same report, Dr. C had identified his examinations of claimant on May 5, 14, and 22, 1998. These appointments must also be considered in the light of claimant's recordings, in evidence, which include one with Dr. C on May 22, 1998, in which the initial concern was added diarrhea based on a prescription of Augmentin. The recording of that visit of May 22nd shows that claimant told Dr. C that her recent EMG did not indicate CTS. When claimant questioned that and her need to continue anti-inflammatory medication, Dr. C responded, "well, it may be an inflammatory condition that's not specifically carpal tunnel . . . there are lots of kinds of inflammation that can cause similar kinds of pain." In his note of the May 22, 1998, examination, Dr. C said that claimant "probably" has "overuse syndrome with some tendinitis being the major component because of using her hands constantly at work . . ." The recorded transcript of the appointment of May 22, 1998, shows that Dr. C knew of the negative EMG at that time and still said in February 1999, considering his three examinations of claimant in May 1998, that claimant "likely" had "[CTS] involving the hands and wrists." On May 5th Dr. C had noted "mild prominence of the connective tissue in the right wrist medially that is somewhat vague" plus "inflammation" of the right wrist, and, on May 14th, he noted "[CTS] persisting" and "the area of swelling she had on the last visit was somewhat reduced today." The medical evidence sufficiently supports the finding of fact that claimant showed she had CTS; more accurately, the evidence sufficiently supports the conclusion of law that claimant has a compensable injury to both hands and wrists.

With an affirmed determination that notice was not timely provided, the carrier is not liable. Therefore, no income benefits will accrue even if disability had been found.

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:

Alan C. Ernst
Appeals Judge

CONCUR IN THE RESULT:

Robert W. Potts
Appeals Judge