APPEAL NO. 991579

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 July 6, 1999. He determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease, that is, bilateral carpal tunnel syndrome (BCTS); that the date of the claimed injury was _____; and that the claimant, without good cause, failed to give her employer timely notice of the injury. The claimant appeals these determinations, expressing her disagreement with them. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant, a nurse, worked as a case manager for the employer handling mostly workers' compensation claims. Though involved in this type of work for a number of years, she began employment with the employer on July 7, 1997. She described the work as involving "writing lengthy reports" on a daily basis for between 30 and 40 cases at any one time and carrying the case files between her home and office. She described the initial report on a case as sometimes being up to 10 pages in length and follow-on reports being two to three pages long. She said she did about two or three reports a day and had to handwrite the reports in accordance with the employer's policy against dictation. In her prior and subsequent jobs, she said, she did not have this problem because she was allowed to dictate reports.

According to the claimant, she noticed problems of pain, numbness, and tingling in her hands in _____. She said she could not attribute this to anything else but the number of reports she was doing. She said she told Ms. G, her supervisor, on the date in August (not further specified) when she first noticed the problem, but that she received no response from Ms. G. The claimant said she continued working and her hands worsened. She said that on November 19, 1997, she again reported the injury to Ms. G because "I wanted something done," but was told that she, the claimant, developed the injury on a prior job. The claimant quit this job in March 1998 and first received medical care from Dr. O in February 1999.

In a transcribed written statement, Ms. G said she did not remember the claimant ever reporting an injury to her. A statement of a coworker, as well as the testimony of the claimant, reflects that BCTS had occurred among other employees. On February 8, 1999, Dr. O diagnosed BCTS, right greater than left. On May 19, 1999, he wrote that in his medical opinion "writing out a lot of medical reports by hand . . . is directly related to her [CTS] and if it did not directly cause it, it certainly did aggravate it."

The claimant had the burden of proving she sustained a compensable injury as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Section 401.011(16) defines injury as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The term includes an occupational disease." Excluded from the definition of an occupational disease is "an ordinary disease of life to which the general public is exposed outside of employment . . . ." Section 401.011(34). Included in the definition of an occupational disease is a repetitive trauma injury which is an injury "occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." To recover for a repetitive trauma injury, a claimant must prove not only that repetitious traumatic activities occurred on the job, but also that there is a causal link between the activities and the injury, that is, that the injury is inherent in that type of employment as compared to employment generally. Texas Workers' Compensation Commission Appeal No. 92272, decided August 6, 1992.

In the case we now consider, the hearing officer found that the claimant did not sustain a repetitive trauma occupational disease for essentially two reasons: first, because she was "evasive" in response to efforts to show "how much and how frequent and how long she wrote and carried files." Thus, he concluded that she "failed to establish that there was enough repetition in any and all her activities to any degree sufficient to cause [CTS] in both hands by repetitive trauma." Second, the hearing officer stated that "handwriting is an ordinary activity of life that is no more a risk in her job than in any other employment." In her appeal of the determination that she did not sustain a compensable BCTS injury, the claimant cites Dr. O's opinion of causation and urges that her writing was "excessive." Whether the claimant's BCTS was causally related to her employment and was not an ordinary disease of life was essentially a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 1994. The carrier responds to this appeal with the comment that "[w]here a claimant's alleged mechanism of injury involves writing, a compensable injury cannot be found."

We cannot agree that the act of writing can never under any circumstances cause a compensable repetitive trauma injury. *See* Texas Workers' Compensation Commission Appeal No. 990742, decided May 24, 1999 (Unpublished), and Texas Workers' Compensation Commission Appeal No. 971166, decided August 6, 1997 (Unpublished). What is crucial is that the claimant establish that the amount and intensity of the writing over time was present in an increased degree or was "indigenous in" the work she was performing and caused the claimed injury. Texas Workers' Compensation Commission Appeal No. 961832, decided October 31, 1996. The hearing officer did not find from the description of her work offered by the claimant that she met this test for establishing the compensability of an occupational disease. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support this determination.

The claimant also asserts on appeal that she established a compensable injury on a theory of aggravation of a prior injury of disease. In doing so, she relies on Dr. O's comment quoted above. Both at the CCH and in her appeal, the claimant stresses that her prior work did not require the actual handwriting of reports and that she was not symptomatic for BCTS until some six weeks after she started working for the employer. Given this evidence, we find no error on the part of the hearing officer in not making express findings on an aggravation theory of injury.

Section 408.007 provides that the date of injury of an occupational disease is "the date on which the employee knew or should have known that the disease may be related to the employment." The claimant testified on both direct and cross-examination that in _____ she connected her pain, numbness, and tingling with her report writing and carrying of files. Indeed, her contention that she reported this injury to Ms. G on that same day in _____ makes little sense if she had not made the possible connection between her work and the condition of her hands. While she also insists that (alleged date of injury), is the date of her injury, she testified that this was the date she "wanted something done." In her appeal, she also states that (alleged date of injury), was the date her symptoms had worsened. Given the claimant's testimony about what she knew or surmised in _____ and her explanations for why she also wanted her date of injury to be (alleged date of injury), we find the hearing officer's determination that a date of injury of _____, under the statutory definition for this type of injury has ample evidentiary support in the record and we decline to reverse that determination.

A claimant must give the employer notice of a claimed injury by the 30th day after it occurs. Section 409.001. Failure to do so without good cause relieves the employer and carrier of liability for benefits. Section 409.002. Whether, and, if so, when, notice is given are questions of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994. In this case, the claimant does not rely on a good cause excuse for failing to give timely notice, but insists with regard to an _____ date of injury that she gave notice to Ms. G on the date of her claimed injury. Ms. G did not recall any such notice. The hearing officer did not find the claimant persuasive in her assertion of notice on this date. Under our standard of review of factual determinations of hearing officers, we find the evidence sufficient to support this determination.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge