

APPEAL NO. 991603

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 9, 1999, a contested case hearing (CCH) was held. With respect to the three issues before him, the hearing officer determined that the date of injury for an occupational disease pursuant to Section 408.007 was _____ (all dates are in 1998 unless otherwise noted), that respondent (claimant) sustained a compensable occupational disease (repetitive trauma right carpal tunnel syndrome (CTS) injury) and that claimant timely notified his employer of the injury pursuant to Section 409.001.

The self-insured city, referred to as self-insured or carrier, appealed, contending that claimant's duties were not of a sufficiently repetitive nature to cause CTS, that there is insufficient evidence of causation and that if the CTS was caused by the work, claimant knew or should have known that the CTS may be related to his employment as early as April and did not report the alleged injury until December 15th. The self-insured requests that we reverse the hearing officer's decision and render a decision in its favor. The file does not contain a response from claimant.

DECISION

Affirmed.

Claimant had been employed by the self-insured as a patrol officer for about 13 years. Claimant testified in some detail about his duties, that he worked a 12-hour shift using a mobile data terminal (MDT), that when he writes tickets, checks license plates, and responds to calls (about six to 10 per shift) he makes multiple keystrokes on the MDT and that he makes about four keystrokes each to clear 400 to 500 messages per shift. Claimant described in detail where the MDT is located in the squad car, how it is used, and how the driver must use his right hand to operate the MDT. Claimant is right handed. In addition, claimant said that he performed other duties such as writing reports, using a computer and handcuffing suspects. Claimant testified that he broke a small bone in his right hand performing a martial arts demonstration some years before this injury and that injury had resolved. Claimant said that in 1997 and 1998, his only martial arts activities were part of his job duties.

Claimant testified that in April he began to have numbness, tingling and difficulties with his right hand but did not know what might have caused it, although the possibility that it somehow might be work related crossed his mind. Claimant testified that his condition grew progressively worse and around the first of December he visited with his police sergeant who had just had (or was going to have) surgery for CTS. Claimant said that he compared symptoms with the sergeant and this was when he first knew or should have known that he might have CTS and that it might be work related. The hearing officer found that the date of injury pursuant to Section 408.007 was _____. The parties stipulated that claimant reported this injury to the self-insured on December 15th.

Claimant first sought medical treatment from Dr. W on January 25, 1999. In initial office notes of that date, Dr. W recited a history of "discomfort, ache, pain and numbness over a period of time," and noted that claimant's writing and use of the MDT and the progression of "nighttime pain, numbness, tingling, aching, weak grip, a heavy feeling in his arm." Dr. W's tests were positive "Tinel's, Phalen's, flexion, and compression tests" and Dr. W diagnosed right CTS. In another office note, also dated January 25, 1999, marked as both "Initial" and "Return," Dr. W expanded on the history, stating:

The patient said he has been having symptoms since April, 1998, but didn't realize exactly what was causing all his pain and discomfort, or that it was work related. It is one of those things that came on slowly and he thought that it might be arthritis or something else, but it became obvious over a period of time that this was a carpal tunnel. He was evaluated in my office and I felt this was a work-related injury.

* * * *

I feel this is a work-related injury for which he will require surgery.

In another very brief note dated May 24, 1999, Dr. W wrote:

This is a work-related injury. The patient uses his hand in repetitive motion, driving, using the computer, dealing with a lot of paperwork and also squeezing with his hands while handling prisoners, etc.

This is a work-related injury in my opinion.

Captain Mr. F, the self-insured's acting chief of police, testified generally supporting claimant's testimony of his duties and that he had no opinion on causation. Mr. F testified that other police officers and dispatchers have had CTS injury claims. Mr. F testified both that eight months could have gone by without claimant "having any idea" his symptoms were work related and that "it should have occurred to [claimant] that it could be a work-related condition." The hearing officer notes that carrier offered into evidence several journal articles which seem to question "whether there is ever any causal relationship between upper extremity disorders and work activity."

Although the self-insured, at the CCH and on appeal, contended that claimant's activities were not of a sufficient repetitive nature to establish causation and that Dr. W's reports were "insufficient to draw such a causal connection" citing the journal articles, the main thrust of the self-insured's contention appears to be that claimant knew or should have known that his CTS "may be related to the employment" as early as April. 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 CTS may be related to the employment, is generally a question of fact for the hearing officer to resolve. While there was some

testimony that it was possible that it crossed claimant's mind that his hand condition could be work related, the hearing officer obviously gave greater weight to testimony that claimant had not heard of CTS and did not make the connection until he spoke with his sergeant in early December and compared notes about their symptoms that he made the connection that his condition may be work related. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. 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 _____, is supported by the evidence, it follows that claimant timely reported the injury on the stipulated date of December 15th, and carrier, or self-insured, is not relieved of liability under Section 409.001. Similarly, whether claimant's activities were sufficiently repetitive to cause the CTS is a factual determination for the hearing officer to resolve. He did so in claimant's favor and such finding is neither incorrect as a matter of law or so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge