

APPEAL NO. 992959

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 1, 1999, a hearing was held. He (hearing officer) determined that respondent/cross-appellant (claimant) sustained a repetitive physical trauma injury to her right shoulder and arms in the form of carpal tunnel syndrome; the date of injury is _____, with claimant also found to have reported the injury within 30 days thereof; disability was found from June 10th to June 16, 1999, and again from July 23, 1999, to the date of the hearing. The hearing officer stated that claimant did not make a knowing election of remedies. Appellant/cross-respondent (carrier) asserts that findings of fact that support the determinations of a compensable injury, timely notice, date of injury, disability, and no bar to a workers' compensation claim based on an election of remedies are in error, but it only discusses the determinations of date of injury, notice, and election of remedies. Claimant asserts that the determination as to her injury should include her cervical spine. Carrier replied that the hearing officer did not determine such an injury and that added documents should not be considered.

DECISION

We affirm.

Claimant worked for (employer) for 30 years as a flight attendant, pushing heavy carts and reaching for items overhead, during long flights overseas. When asked what body parts were injured, she replied, "[f]rom my neck, right shoulder, and all of my right arm." While her treating doctor, Dr. B, diagnosed a cervicalbrachial syndrome and said it was caused by claimant's repetitive work, Dr. V, who examined claimant at the request of the Texas Workers' Compensation Commission (Commission) reported that she found no tenderness over the cervical spine. Her impression included "no radicular signs or symptoms." She also stated as an impression, "cervical spondylosis, R/O disc herniation at the time of her injury on _____." Dr. V then addressed a Commission question by saying, "[t]he right shoulder pain and the hand numbness are, in all medical probability, related to her job duties. The cervical spondylosis is probably unrelated. However, if a cervical disc herniation is diagnosed, this is also likely to be due to heavy lifting/pushing/pulling at work."

Claimant testified that she started having symptoms in April 1999, but that she did not know that her symptoms "were" work related until _____ (the question did not ask when she knew that her symptoms "may be" related to her work). See Section 409.001. (Claimant said she saw Dr. B on _____, and he told her that she had a work- related injury.) In a statement dated August 30, 1999, claimant answered a question related to how her employer determined the date of injury to be _____, by saying, "[w]ell, that, I just, I pulled that out because I ah, sought medical attention about three weeks after that, three to four weeks after that because the pain in my shoulder and arm would never go away, and ah, it was during that month of, of May that I kept working and, and trying to work with the, the arm and it progressively got worse." Later in the same statement, she

said that she realized "during May" that her pain was related to her work with the carts. On cross-examination, claimant agreed that in her statement she had responded, "[w]ell, I realized it during May when I was working the carts." Additional questions as to this answer were not asked at the time, but later in cross-examination claimant was asked why she did not go to employer's medical personnel "in April or May for this problem" and she replied, "I had no idea that it was work related." Then, on redirect examination, claimant said that she did tell an employer's representative, who sought information relative to an injury, that she started having symptoms in April and "all during May."

Dr. B's report related to his _____, examination of claimant says, not that he told claimant she had a work-related injury, but that, "patient states that repetitive lifting/pushing/pulling galley equipment caused neck/right shoulder/right arm pain." In addition, Dr. B's "Treatment Plan Worksheet" which is dated July 26, 1999, says that the "date of injury" is " _____."

The above responses and medical records provided conflicting evidence as to the date of injury. This evidence would have supported a determination of a date of injury of _____, but it also provided some support for the hearing officer's finding of fact that claimant's date of injury was not until _____. The hearing officer also found that claimant attempted to report her injury on _____, but "was told it was past thirty days"; the record does not reflect any evidence that such a conversation occurred on _____, but does provide some evidence that such a conversation between claimant and CC, an attendance manager for employer, occurred on June 18, 1999 (as described by claimant). CC could not recall that claimant reported a work injury, as opposed to being unable to work because of sickness; CC also indicated that she had an entry for June 16th, not June 18, 1999. She said that claimant talked to her about a family medical leave plan. CC acknowledged that she could have responded to an inquiry about workers' compensation by saying that a notice needed to be given within 30 days.

While carrier argued that the date of injury was in _____ and that claimant did not report an injury until July when she gave the employer information about an injury having occurred on _____, the testimony of claimant, partially corroborated by CC to the extent that communication took place in mid-June 1999, if believed, provided sufficient support for a determination that claimant provided notice on June 18, 1999, within 30 days of a date of injury of _____.

The hearing officer in his Statement of Evidence says that claimant merely sent some of her doctors' bills to the group medical carrier for payment and that this included prior doctors' bills. The evidence, accepted by the fact finder, that claimant notified CC of a work injury and was told she had waited too long, would also support a determination that claimant did not make a knowing election of remedies that would bar her from asserting a workers' compensation claim.

There was no evidence at the hearing that the dates of disability found by the hearing officer were not accurate or did not result from the claimant's arm and shoulder condition.

The hearing officer is also the sole judge of the evidence in regard to what the injury consisted of in the case under review. As such, he could give more weight to the opinion of Dr. V than he did to the opinions of Dr. B and could also read Dr. V's report as indicating only that the right shoulder and arms were injured. Claimant included a copy of Dr. V's report, admitted as one of her exhibits at the hearing, and also included an affidavit from Dr. B dated November 15, 1999, which was included as a hearing officer's exhibit in the record. These documents were considered by the hearing officer; as stated, the hearing officer may give more weight to the part of Dr. V's report which agrees with a shoulder and arm injury than he did to other comments made by Dr. V and to Dr. B's report in determining what compensable injury was sustained.

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:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge