APPEAL NO. 000046
FILED FEBRUARY 22, 2000

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 December 7, 1999. The issues at the CCH were whether the respondent (claimant) sustained a repetitive trauma injury; what was the date of injury; whether the appellant (self-insured) was relieved of liability for failure of the claimant to timely notify his employer of the injury; whether the claimant has had disability since March 1, 1999; and whether the claimant made an election of remedies, thus barring pursuit of workers' compensation benefits. The hearing officer determined that the claimant sustained a repetitive trauma injury (carpal tunnel syndrome (CTS)); that the date of injury was _____; that the claimant first reported an injury no later than January 21, 1999, but had good cause to delay reporting the injury until January 21, 1999; that the claimant had disability from January 22, 1999, to the date of the hearing; and that the claimant did not make an informed election of remedies. The self-insured has appealed all findings of fact and conclusions of law pertaining to all the above determinations by the hearing officer, essentially urging they are against the overwhelming or great weight and preponderance of the evidence. There is no response in the file.

DECISION

Affirmed in part, reversed and remanded in part.

The claimant, a technical specialist for employer for some 11 years, performed computer entry-type work some six hours a day. He testified that sometime after new ergonomical modifications were made to his workplace, in the early or middle part of 1998, he developed tingling and numbness in both his hands after entering quite a lot of data, noticing symptoms at night and in the morning. He went to Dr. J who gave him splints and subsequently arranged for x-rays, an MRI, and, eventually, an EMG. Dr. J indicated that was common for someone working on a computer but did not indicate at that time that it was work related. The claimant also had cervical complaints at the time. According to the claimant, Dr. J told him he had carpal tunnel symptoms and that he would reevaluate him at the end of the year. The claimant stated he did not know at that time whether he had CTS or that this was work related and had used his group health insurance, not realizing workers' compensation might cover it. He states a second EMG was done on _____, and at that time Dr. J informed him he had CTS. The claimant stated that on _____, he thought about an earlier safety meeting where work-related CTS was discussed, one of the other employees (a supervisor) mentioned he had CTS surgery at some time, and the claimant mentioned he had carpal tunnel symptoms, was going to have another EMG, and that a possible remedy for it was surgery. The claimant states that on _____ he put "two and two together" and then realized his diagnosed CTS was work related. He testified that on December 26th his supervisor, SB, was aware he was going to have surgery but workers' compensation was not discussed

and he was not told it could be filed as workers' compensation. Surgery was scheduled for January 22, 1999, and the claimant stated that on January 21, 1999, he called to remind his supervisors he was going to be off for surgery for which he took sick leave. He was told to go to the company nurse and at that time workers' compensation was discussed and forms filled out. Subsequent forms show the date of first notice to be January 21, 1999. The claimant testified that he had continued working up to the time of his surgery, which was performed on his left wrist; that it did not relieve the problems; that he was not able to work without the use of his dominate left hand; and that until it was better, surgery was delayed for his right hand.

The claimant acknowledged that an MRI of the cervical area showed protrusions and that Dr. J thought this could also be part of the problem. The claimant indicated, in a prehearing statement, that he hit his head at work sometime the year before. However, in an October 4, 1999, letter Dr. J states the claimant was diagnosed with CTS; had decompressive surgery which was not of benefit; and, given the data entry activity, the CTS was work related. A carrier review doctor, Dr. A, stated in a letter of November 22, 1999, that in his 41 years as an orthopedic surgeon, he had never found a single case of CTS that "I thought could be related by use of a computer, a mouse, or a typewriter." A statement in evidence from SB stated that January 21, 1999, was the first he was aware of or had notice of the claimant's CTS or surgery, that the claimant indicated to him that he had not reported the condition to anyone else, and that the claimant stated he related the discomfort to his hands/wrists to sometime after the ergonomic modifications.

As stated, the hearing officer found that the claimant sustained a work-related CTS injury and that the claimant suffered disability. While there is certainly conflicting evidence on these issues including the opinion of Dr. A, the claimant's testimony, which the hearing officer apparently found to be credible, together with the opinion of Dr. J, forms a sufficient evidentiary basis to support the finding of a compensable CTS injury and disability. This is so even though the evidence may give rise to inferences different from those found more reasonable by the hearing officer. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994; Section 410.165(a). In any event, we cannot conclude that the findings of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer also found that the date of injury was _____, the date the claimant knew or should have known that the injury (an occupational disease) may be related to the employment. Section 408.007. On this date, the claimant got the results of a second EMG and was told by his doctor that he had CTS (according to the claimant he was only told previously that he had symptoms of CTS) and that he related this information to the earlier safety meeting when CTS was discussed and realized at that time it was work related. Again, it is apparent that the hearing officer found the claimant credible and accepted his testimony over the other evidence that could reasonably suggest that the claimant should have related his condition to his work at an earlier time. In this regard, the

hearing officer found that an MRI disclosed some cervical abnormality, that although the EMG did show possible mild bilateral CTS in (month) 1998, Dr. J was suspicious that the cervical processes were the cause of the claimant's symptoms, that the claimant's symptoms arose with nonwork activity and that as a reasonably prudent person the claimant neither knew or should have known that his symptoms may be related to his work. While another fact finder might have reached a different conclusion, we cannot conclude that there is no evidentiary basis for the finding or that it is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). We also conclude there was sufficient evidence from which the hearing officer could find there was no election of remedies under the circumstances.

The hearing officer next found that the claimant first reported his injury not later than January 21, 1999, and that he had good cause to delay reporting the injury until January 21, 1999. Clearly, there was sufficient evidence from which the hearing officer could find the first report of injury occurred on January 21, 1999. However, with the date of injury established as _____, the claimant clearly did not report the injury within 30 days as required by Section 409.001. Failure to timely file notice of injury relieves a carrier of liability unless "the commission [Texas Workers' Compensation Commission] determines that good cause exists for failure to provide notice in a timely manner. . . ." Section 409.002(2). While the hearing officer stated in his finding that the claimant first reported an injury no later than January 21, 1999, and that he had good cause to delay reporting the injury until January 21, 1999, there are no findings of what the good cause was that existed and it is not otherwise apparent from his Decision and Order. Where untimely notice is found, there must be a basis for a finding of good cause to hold a carrier liable under Section 409.002. Texas Workers' Compensation Commission Appeal No. 982903, decided January 21, 1999. *See also* Texas Workers' Compensation Commission Appeal No. 990103, decided March 1, 1999, a decision following a remand on good cause in Texas Workers' Compensation Commission Appeal No. 981699, decided August 28, 1998. Being unaware of the law is not good cause for an untimely reporting. Texas Workers' Compensation Commission Appeal No. 93977, decided December 3, 1993. Believing that an injury is trivial can be good cause for a late reporting but that was not advanced or supported by the evidence here. Texas Workers' Compensation Commission Appeal No. 992338, decided December 6, 1999 (Unpublished). *See also* Texas Workers' Compensation Commission Appeal No. 990562, decided April 29, 1999, and Texas Workers' Compensation Commission Appeal No. 990844, decided June 7, 1999. Without any findings as to what constituted or was considered by the hearing officer to be good cause and it not being otherwise apparent to us from the Decision and Order and record we reviewed, we remand for further consideration and findings on the issue of good cause for not reporting the injury, determined to be a _____, date of injury, until January 21, 1999.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Elaine M. Chaney
Appeals Judge