

APPEAL NO. 000211

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 5, 2000, a hearing was held. The hearing officer determined that appellant (claimant) sustained an occupational disease injury (carpal tunnel syndrome (CTS)) on \_\_\_\_\_, but that claimant did not timely notify his employer and did not show good cause for his delay in giving notice; the hearing officer also found that claimant is not barred from pursuing a workers' compensation claim because of an election of remedies. Claimant asserts that he did not associate his hand pain with work until he saw a doctor in May 1999; he adds that after May 1999 he trivialized his CTS until he saw another doctor on August 31, 1999, and then reported the injury in a reasonable time. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on \_\_\_\_\_, as a truck driver. He testified that he drove daily, but did not consider himself a "long-haul" driver, with most timber loads destined for points in Texas or within an adjoining state. He described having to tie down his loads with seven straps per load and tightening each strap down with a bar. In his testimony claimant could not recall when his pain began but he had provided a statement in September 1999 which gave more detail. In that statement he said he began having problems with his hands "around the first of the year" (1999). When asked if he knew in January 1999 that his symptoms were work related, claimant at first said that he did not realize the connection "that far back." Later, when asked if he knew it was related to his work before or after he saw a doctor in May 1999, claimant said "I knew it before. I knew when it started happening. . . ." The next question was, "[s]o that would be back at the first of the year then?". Claimant answered, "uh hun."

Claimant also said in that statement that before he first saw a doctor Dr. J in May 1999, about his hands, they "got so bad . . . getting to where I couldn't write." Claimant also said that a nerve test was done and Dr. J diagnosed CTS. He said this occurred "somewhere around in May." Claimant, continuing the same answer, then said, "he told me that after he told me right off the bat then that I would probably have to have surgery done on them. You know to fix them. But I just ignored it." Claimant's next comment was, "[b]ecause I really didn't realize the seriousness of it."

Dr. J's first note in evidence is dated April 28, 1999, which dealt with claimant's low back pain and indicated that Dr. J injected claimant's low back with DeproMedrol that day. (Claimant testified that one reason he trivialized the CTS was the medication he was getting for his back had allowed him to keep working.) On \_\_\_\_\_, Dr. J wrote that claimant was seen for upper extremity numbness. Dr. J indicates in that same note that an EMG was performed which showed prolongation of certain effects; his impression, stated in

that note, was "bilateral [CTS]," worse on the left. Dr. J wrote that he provided wrist splints, which claimant testified that he wore.

On June 19, 1999, claimant again saw Dr. J, who said claimant was wearing the splints constantly. Dr. J injected the carpal tunnels with DeproMedrol. Dr. J also said he would see claimant in one week and would discuss his situation at that time relative to a referral to surgery. Claimant then saw Dr. A on August 31, 1999, who said, "I anticipate he will require carpal tunnel release in the very near future." Claimant then gave notice to employer in early September 1999.

Under Section 409.001, notice is to be given not later than 30 days after the date of injury. Section 409.002 provides that a carrier is relieved of liability where timely notice is not given, unless good cause exists for the failure to do so.

Claimant maintained that because of the way he was able to continue to work with injections to his low back, he felt that the CTS would eventually recede somewhat and would not keep him from working. The hearing officer is the sole judge of the weight and credibility of the evidence, however. In this case, not only did claimant provide evidence that he knew the injury may be related to his work as of January 1999, but also sought medical care in early May 1999, and during that first medical visit was told he had CTS and, also according to claimant, Dr. J "told me right off the bat" that surgery may be necessary.

The hearing officer was presented facts (testing and diagnosis of CTS in May and some evidence that surgery was addressed on that date) sufficient to lead him to believe not that claimant did not think the injury was serious but that claimant ignored it or tried to put it out of his mind because of other stress he was encountering. Whether or not a claimant has trivialized an injury is a factual question for the hearing officer, and the hearing officer may certainly take into consideration evidence as to diagnoses, assurances, or warnings provided by medical personnel months before notice is given in addition to a claimant's testimony in deciding whether or not good cause existed for a delay in giving notice. There is no standard set forth in good cause cases that says an injury is not serious until surgery is scheduled.

There was no appeal to the determination that an occupational disease was incurred on \_\_\_\_\_, and no appeal to the determination that no election of remedies took place. The decision and order are sufficiently supported by the evidence and are affirmed. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

---

Joe Sebesta  
Appeals Judge

CONCUR:

---

Gary L. Kilgore  
Appeals Judge

---

Elaine M. Chaney  
Appeals Judge