

APPEAL NO. 000564

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 20, 2000. The hearing officer concluded that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the date of injury is _____; that claimant did not have disability resulting from an alleged compensable injury; and that the respondent (carrier) is relieved from liability because of claimant's failure to timely notify the employer. Claimant has requested our review of these conclusions and certain underlying factual findings, asserting the evidence which she contends should result in our reversal. The carrier responds that the evidence is sufficient to support the challenged conclusions and findings.

DECISION

Affirmed.

The parties stipulated that claimant first reported her claimed injury on June 11, 1999. Claimant testified that prior to June 10, 1998, which was the last day she worked for the employer taking phone calls and typing various documents on the computer as she had been doing, six to seven hours a day for 14 years, she could hardly get out of bed due to neck pain. She indicated that she had a longstanding problem with her neck, dating back to a whiplash injury. Claimant said she did go to work on June 10, 1998, but then went to a doctor who took her off work. She stated that she had also had some pain in her hands and tingling in her fingers about two days before June 10, 1998, but did not think it was related to her work. Claimant indicated that she underwent cervical spine surgery at the C6-7 level by Dr. W on September 3, 1998, and that she did not know whether her continued bilateral hand pain was related to her cervical spine condition or was carpal tunnel syndrome (CTS).

Claimant further testified that she has been unable to work since July 13, 1998; that after that date she first drew short-term disability benefits for six months and then began drawing long-term disability benefits; that the disability carrier=s adjuster advised claimant that she would need to file for Social Security disability benefits; and that she told the adjuster she would probably have to apply for workers= compensation benefits as well. In her recorded statement of July 29, 1999, to the adjuster, claimant stated that she could draw the long-term disability benefits for up to five years, "depending on how [she] takes care of the workers= comp and the social security disability"

Claimant stated that Dr. W discussed the diagnosis of CTS with her on _____, and that she wrote that date on her Employee=s Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) as the date of injury and as the date she first knew the occupational disease may be related to her employment. She explained, however, that at that point she "was only going on the paperwork" and not what she knew, and that she did not actually know she had CTS until June 11, 1999, when the results of tests ordered by Dr. G

were obtained. She stated, as stipulated, that she reported the CTS injury on June 11, 1999. Claimant further stated that Dr. W advised her on August 26, 1999, that her CTS was work related. Claimant's TWCC-41, which is dated June 30, 1999, states the injured body parts as "wrists, hands, arms, elbows (both) CTS."

In a May 20, 1999, letter of complaint to the U.S. Office of Personnel Management, claimant mentioned being in constant pain from CTS. In a July 19, 1999, letter to the carrier claimant wrote that her injuries resulted from repetitive typing during her 14 plus years with the employer; that her last full day of work was July 10, 1998, due to a herniated cervical disc at C6-7; and that in January she was informed that she has bilateral CTS in the wrists and elbows. In an August 2, 1999, letter to the carrier, claimant stated that Dr. S suspected early CTS on March 16, 1998; that on August 14, 1998, an MRI revealed a large herniated disc at C6-7 with impingement on the spinal cord; that she underwent surgery at C6-7 on September 3, 1998, followed by physical therapy; that an EMG of December 29, 1998, revealed mild bilateral CTS; and that on _____, Dr. W advised her of the CTS.

Dr. S's March 16, 1998, notes state that several years earlier claimant had a very bad whiplash injury. His impression was that claimant "may have very early carpal tunnel." Dr. W's operative report of September 3, 1998, states that claimant had severe intractable neck and bilateral arm pain with weakness in both hands, that she had a herniated cervical disc at C6-7, and that she underwent a cervical discectomy and fusion procedure. Dr. W's _____, report states that she recommends that claimant be evaluated for CTS for persistent hand numbness.

In her recorded statement to the carrier on July 28, 1999, claimant stated that she was diagnosed with CTS on _____, by Dr. W, her treating doctor. Dr. W wrote on August 26, 1999, that claimant had an EMG in March 1999 which showed bilateral CTS; that claimant's symptoms date back to March 1998 when she first saw a doctor for her cervical spine problem; that "[b]ecause of her repetitive work of typing and writing, which is a major risk factor for [CTS], her problem is therefore due to a work-related injury"; and that "the patient is planning to file this under worker's comp."

Dr. S wrote on October 21, 1999, that claimant has evidence of CTS "which has been progressive for the past 9 to 10 months" and that she "most likely had a double crush syndrome with significant cervical problems as well as [CTS]." Dr. S wrote on November 1, 1999, that claimant "has had a long history of bilateral carpal and cubital tunnel syndrome" and is "a very reasonable surgical candidate."

Dr. M, who evaluated claimant on November 2, 1999, wrote that claimant reported having some symptoms of hand pain and tingling into the fingers sometime prior to her reported injury but that this worsened in January 1999 and that claimant felt this was somehow different from her prior symptoms and she reported injury on _____.

In addition to the dispositive legal conclusions, claimant challenges factual findings that _____, was the day she first knew or should have known her bilateral CTS may have been related to her employment; that claimant did not act as a reasonably prudent person would have under the same or similar circumstances by waiting from January 12 to June 11, 1999, to report her injury; that claimant's bilateral CTS is not a result of the work she performed for her employer as a customer service specialist; and that any inability to obtain and retain employment at wages equivalent to her preinjury wage is due to something other than an alleged compensable injury sustained by claimant while working for this employer.

As she was advised at the outset of the hearing, the burden was on claimant to prove by a preponderance of the evidence that she sustained an occupational disease injury (see Section 401.011(34)); the date of the injury (see Section 408.007); the timely reporting of the injury (see Sections 409.001 and 409.002); and that she had disability (see Section 401.011(16)). These issues presented the hearing officer with questions of fact to resolve. The hearing officer's discussion of the evidence contains some comments which indicate why he was not persuaded that claimant's evidence met her burden of proof. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual determinations of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Elaine M. Chaney
Appeals Judge