APPEAL NO. 000568

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 February 18, 2000. The hearing officer determined that the appellant (claimant) sustained the occupational disease of bilateral carpal tunnel syndrome (BCTS); that the date of the injury was _____; that the claimant failed without good cause to timely give her employer notice of the injury; that the respondent (carrier) waived the right to dispute the compensability of the injury on any other basis than the lack of timely notice; and that the claimant did not have disability. The claimant appeals the date of injury, lack of timely notice, and disability determinations, expressing her disagreement with them. The carrier replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a customer service representative. Most of her job duties involved typing on a computer keyboard. In a statement transcribed by the carrier on December 6, 1999, the claimant said she first noticed pain in her wrists around _____ or _____. At that time, she said, she thought it began with the typing because that was essentially all she did with her hands. By mid-October 1999, the pain so intensified that she decided to seek medical treatment. In her testimony, the claimant said that she noticed the pain when she started typing and every time she went to work the pain got worse. She further distinguished between knowing she had pain and knowing the pain was from an injury at work.

The claimant first saw Dr. A, D.C., on October 20, 1999. He diagnosed BCTS and said in his report of the first visit that the claimant had experienced the pain "about three months ago." In a letter of January 11, 2000, Dr. A wrote that the claimant sought care for a "work related injury which occurred on _____."

Critical to the resolution of carrier liability in this case was the determination of the date of injury. Section 408.007 provides that "the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment." We have noted in the past that the date of injury of an occupational disease need not be as early as the first symptoms, nor as late as a definitive diagnosis. Texas Workers' Compensation Commission Appeal No. 970851, decided July 2, 1997. The determination of this date presents a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 992783, decided January 26, 2000. In this case, the claimant's position is that her date of injury should be October 15, 1999, the date she apparently decided to seek medical care for her bilateral wrist pain. The hearing officer considered the evidence and found that the claimant knew or should have known her bilateral wrist and hand complaints "might be related to her repetitive use of her hands and wrists in her job duties" in _____, not much later in October 1999 when the pain became so significant

that she decided to go to a doctor. The hearing officer, therefore, determined that the date of injury was _____. In her appeal, the claimant expresses her disagreement with this determination and again argues for an _____, date of injury. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support the date of injury determination.[1]

Sections 409.001 and 409.002 provide that a claimant must give the employer notice of the injury by the 30th day after the date of injury. Failure to give notice by the 30th day relieves the carrier of liability for benefits in the absence of good cause for the lack of timely notice. The claimant in this case did not rely on good cause for the lack of timely notice, but on a later date of injury. In any case, when asked why she waited this long to give notice, she only said that she waited until the symptoms became severe. The test of good cause is whether the claimant acted with reasonable prudence in failing to timely report the injury. Texas Workers' Compensation Commission Appeal No. 931157, decided February 3, 1994. This, too, presents a question of fact for the hearing officer to decide. We find the evidence sufficient to support the hearing officer's finding of no good cause for the lack of timely notice.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16). There being no compensable injury in this case, there could be no disability.

[1]The parties stipulated that the carrier first received written notice of the claimed injury on October 20, 1999, and on October 26, 1999, filed a dispute. *See* Section 409.021. The finding that the sole defense raised by the carrier was lack of timely notice has not been appealed.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge