APPEAL NO. 000707

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 March 14, 2000. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained an injury in the course and scope of his employment in the form of an occupational disease; that the date of injury is _____; and that the claimant timely reported his injury to his employer. The appellant (carrier) appeals, asserting that each of those determinations is against the great weight of the evidence; however, the primary focus of its appeal is on the date of injury and timely notice issues. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that he began working for the employer in February 1997 and that his job duties require constant keyboard work. He stated that his job required him to work at a computer eight to ten hours a day from Monday to Friday and some Saturdays. The claimant further testified that in April 1998 he saw his primary care physician, Dr. C with complaints of right wrist pain and that Dr. C diagnosed arthritis at that time, which was treated with medication. On August 24, 1998, the claimant went to the Veteran's Affairs (VA) hospital for a check-up regarding an ongoing gastrointestinal problem. Progress notes from that appointment reflect that the claimant also complained of chronic wrist pain of several years duration. Those records note that the claimant works at a keyboard. In _____, the claimant returned to the VA with continued complaints of right wrist pain. At that time, he was diagnosed with carpal tunnel syndrome (CTS) and given a steroid injection in his right wrist. March 23, 1999, progress notes from the VA clinic repeat the CTS diagnosis and state that his symptoms were not relieved by the January steroid injection. Progress notes from an April 20, 1999, appointment, reflect continuing complaints of right wrist pain and note that the claimant is employed doing computer data entry and types over 10 hours each day. The diagnosis is chronic right wrist pain and the CTS diagnosis is questioned. Thus, the claimant was referred for EMG testing. Dr. F performed the EMG testing on _____. In her consultation notes of July 12th, Dr. F states that the claimant's wrist pain is worse while he is typing, driving and in the evening. In addition, those notes reflect that the claimant stated that the wrist pain develops when he is typing, that he rubs his wrist at those times and the pain decreases for a short time, and that by evening he has a lot of wrist pain. The EMG revealed no evidence of CTS and Dr. F diagnosed tendinitis. In a September 24, 1999, progress note, Dr. F opined that the claimant had "chronic tendinitis secondary to cumulative trauma from work activities."

The claimant testified that on _____, Dr. F told him that he needed to reduce the number of hours he was working and that he also had to change his work activities such that he was not constantly typing during the day. He stated that on July 13, 1999, he had a

conversation with his supervisor, Ms. M, about what Dr. F had told him. On direct-examination, the claimant maintained that prior to _____, he did not know that his injury was being caused by his work. However, on cross-examination, the claimant repeatedly testified that by _____ he realized that the pain in his wrists was being caused by the constant typing he was doing at work and the VA records also reflect that the claimant was attributing his wrist pain to his work activities in January, March and April of 1999. When he was asked why he did not report his wrist injury to his employer prior to July 1999, the claimant stated that he did not report an injury to his employer earlier because no testing was done to confirm the CTS diagnosis. Specifically, the claimant testified that it would be fair to say that in _____ he realized that he had right wrist problems and that those problems were because of the typing he was doing at work. He stated that nevertheless he did not report an injury because no one had done a test on him to find out what the problem in his wrist was and he "didn't have anything official in writing to tell him what he had."

Initially, we will consider the carrier's challenge to the hearing officer's determination that the claimant sustained a repetitive trauma, occupational disease injury in the course and scope of his employment. The claimant had the burden of proof on that issue. He testified that his repetitive typing caused the tendinitis in his right wrist and Dr. F likewise attributed the claimant's tendinitis to his work activities. The claimant's testimony and the causation evidence from Dr. F provide sufficient evidentiary support for the hearing officer's determination that the claimant sustained an occupational disease injury in the course and scope of his employment. Nothing in our review of the record demonstrates that that determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We are more troubled by the hearing officer's date-of-injury and timely notice determinations. The hearing officer determined that the date of injury for the claimant's occupational disease under Section 408.007, the date he knew or should have known that the disease may be related to the employment, is _____. In addition, she found that the claimant reported his injury on July 13, 1999. The hearing officer determined that by telling Ms. M on July 13th that he needed to modify his work activities and workstation and that he needed to reduce his hours because the doctor had told him that he was typing too much, the claimant provided sufficient information to put the employer on notice that he was reporting a work-related injury. That determination is not so contrary to the great weight of the evidence as to compel its reversal on appeal. Pool, *supra*; Cain, *supra*. However, the affirmance of July 13th as the date the claimant reported his injury to his employer does not end the inquiry in this case. The carrier contends that the hearing officer's determination that _____, is the date of injury is against the great weight of the evidence, emphasizing the claimant's repeated testimony that he knew as early as _____ that the typing he was doing at work was causing the pain in his wrist. The carrier's point in that regard is well-taken. The claimant specifically testified that by _____ he knew that he had right wrist problems that were

caused by the repetitive typing he was doing at work. In the face of such explicit testimony, we find that the hearing officer's determination that _____, was the date the claimant knew or should have known that his injury may be related to work is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, we reverse the hearing officer's determination that the date of injury in this case is _____, and render a new decision that the claimant knew or should have known that his right wrist injury was work related in _____. In addition, we reverse the hearing officer's determination that the carrier is not relieved from liability under Section 409.002 and render a new decision that the carrier is relieved of liability in this instance because the claimant did not report his injury to his employer until _____, more than 30 days after any date in _____.

The hearing officer's determination that the claimant sustained an occupational disease injury in the course and scope of his employment is affirmed. However, her determination that the claimant sustained a compensable injury is reversed and a new decision is rendered that the carrier is relieved from liability for the claimant's injury in this case due to the claimant's failure to timely notify his employer of his injury pursuant to Section 409.001.

Elaine M. Chaney
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge