APPEAL NO. 000798

This case returns following a remand in Texas Workers' Compensation Commission Appeal No. 000046, decided February 22, 2000. The issue of timely notice, and more specifically the issue of good cause for the respondent's (claimant) failure to report his injury, the date of which was determined to be _____, until January 21, 1999, was remanded for further consideration and findings. On March 23, 2000, a hearing on remand was held. With respect to the issue before him on remand, the hearing officer determined that the appellant (carrier) is not relieved of liability for benefits because the claimant had good cause for his failure to give timely notice of his injury to his employer "based on his prior report of carpal tunnel syndrome [CTS] to supervisors and Claimant's reasonable belief at that time that the supervisors would attribute [CTS] to repetitive activities on the job." In its appeal, the carrier asserts that the hearing officer erred in finding that the claimant had good cause for his failure to timely report his injury to his employer. The carrier also contends that the hearing officer erred in admitting Claimant's Exhibit No. 5 at the remand hearing. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

Because of the limited nature of the issue before us on appeal, our factual recitation will be limited to those facts most germane to that issue. In Appeal No. 000046, *supra*, we affirmed the hearing officer's determinations that the claimant sustained an occupational disease, bilateral CTS, as a result of the repetitively traumatic activities he performed at work; that the date of injury under Section 408.007 is _____; and that the claimant is not barred from pursuing Texas workers' compensation benefits by an election to receive benefits under a group health insurance policy. On _____, the claimant underwent EMG testing for a second time and the bilateral CTS diagnosis was confirmed. At that point, Dr. J, who had performed the EMG testing, advised the claimant that he would probably need surgery. The claimant testified that on December 26, 1998, he reported to his supervisors that he had bilateral CTS and that he was going to have surgery in January 1999. The claimant acknowledged that he did not specifically state that his CTS was work related in that conversation; however, he testified that he believed that the employer realized it was work related because the employer had previously had safety meetings where CTS had been discussed and reference was made to the fact that several employee had been diagnosed with CTS with the cause being identified as the repetitive work activities those employees were performing. In addition, the claimant noted that the employer had made ergonomic changes to the work stations. On January 21, 1999, the claimant called his supervisor, Mr. B, to remind him that he was going to have left carpal tunnel release surgery the following day. In a statement dated January 25, 1999, Mr. B maintained that January 21st was the first date the claimant reported a work-related injury to him.

As noted above, the hearing officer determined that the claimant had good cause for his failure to timely report his injury to the employer based on his "reasonable belief at that time that the supervisors would attribute [CTS] to repetitive activities at work." In Finding of Fact No. 8 the hearing officer further noted that as "a reasonably prudent person [claimant] reasonably believed that supervisors and managers attributed [CTS] to repetitive trauma at work, in view of the supervisors participation in safety meetings regarding ergonomics and the relation to on the job [CTS]." In its appeal, the carrier argues that the hearing officer is essentially finding good cause based upon a determination that the employer had actual knowledge of the work-related nature of the claimant's injury. We believe that the carrier's point in that regard is well taken. The concepts of good cause and actual knowledge are separate and in making his good cause determination in this case, the hearing officer has blurred that distinction. Nonetheless, we need not reverse the hearing officer's conclusion that the carrier is not relieved of liability in this instance under Section 409.002. We have long recognized that the issues of good cause and actual knowledge are subsumed i n the issue of timely reporting. Texas Workers' Compensation Commission Appeal No. 962375, decided January 6, 1997; Texas Workers' Compensation Commission Appeal No. 92386, decided September 8, 1992. Similarly, it is well settled that a hearing officer's decision can be sustained on any reasonable basis supported by the evidence. Daylin, Inc. v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied). The hearing officer's good cause findings in this case are really more in the nature of findings that the employer had actual knowledge that the claimant's CTS was work related when he reported to them on _____, that he indeed had CTS and that it would require surgery. The evidence in the record support that at that time the employer had recognized the causal connection between CTS and the repetitive work activities performed by its employees. Accordingly, the hearing officer's determination that the carrier is not relieved of liability under Section 409.002 is affirmed in this case because the evidence supports a determination that the employer had actual knowledge that the claimant's CTS was work related.

The carrier argues that the hearing officer erred in admitting Claimant's Exhibit No. 5 at the remand hearing, which consisted of three written statements from coworkers of the claimant, because those statements were not timely exchanged. We agree that the hearing officer erred in admitting these documents in light of the fact that he did not find good cause for the claimant's failure to timely exchange the documents in the exhibit. Nonetheless, we cannot agree that the hearing officer's error in admitting the exhibit on remand is reversible error in that the exhibit is cumulative of other evidence properly before the hearing officer. Thus, his admission of the challenged exhibit, while error, was not reversible error because its consideration "was not reasonably calculated to cause and probably did not cause the rendition of an improper judgment." Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge