

APPEAL NO. 001307

On May 9, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that respondent (claimant) sustained a compensable occupational disease, that the date of injury was _____, and that appellant (carrier) is not relieved of liability under Section 409.002 because claimant timely reported her injury. Carrier requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. No response was received from the claimant.

DECISION

Affirmed.

Claimant claims a work-related injury to her right hand. Claimant testified that she has worked for employer for 19 years; that employer manufactures air conditioners; that in January 1992 she had a left hand carpal tunnel release; that she may have had right hand problems when she had her left carpal tunnel release, but that if she did, her right hand problems went away; that some paperwork she saw said that she had bilateral carpal tunnel syndrome (CTS); that she was diagnosed with a right hand ganglion cyst by Dr. D in 1997; that she has not had surgery on her right hand; that for the past five or six years she has worked as a control box assembler for employer; that as a control box assembler, she has to do a lot of lifting and a lot of wiring and assembly work using screwdrivers, air guns, pliers and other tools; that the work requires fine hand movements; that about a week before September 1, 1999, her right hand started to hurt her while she was working; that she went to employer's nurse's assistant and told her that she wanted to see Dr. D; and that she did not know what was causing her right hand pain when she went to employer's nurse's station.

Claimant further testified that employer sent her to Dr. D; that she saw Dr. D on September 15, 1999; that Dr. D told her that he could not treat her and referred her to Dr. T; that when she saw Dr. T on _____, Dr. T told her that she had right CTS and right de Quervain's tenosynovitis; that she did not know what was wrong with her right hand until she saw Dr. T on _____; that on _____, after she saw Dr. T, she returned to work and gave employer's nurse a return-to-work evaluation form completed by Dr. T; that she gave a copy of that form to her supervisor; and that she completed her written statement of occupational injury on October 27, 1999, and gave that to employer on that day.

Employer's nurse's assistant wrote on August 31, 1999, that claimant came to her that day complaining of both hands hurting, that claimant wanted to see Dr. D, that claimant said that it was not a new injury, and that claimant said that she had seen Dr. D for both hands before. Dr. D wrote on September 15, 1999, that he saw claimant on that day, that claimant does repetitious work at employer, that claimant was complaining of extensor thumb pain, that claimant probably has de Quervain's syndrome which he does not treat, and that he referred claimant to Dr. T.

Dr. T wrote on _____, that he saw claimant on that day, that claimant was apparently injured at work in 1997 when she had a knot on her hand, that claimant had been put on light duty, and that claimant recently returned to regular duty and noticed her right hand hurting again. Dr. T noted that claimant assembles control boxes for employer. Dr. T diagnosed claimant as having right de Quervain's tenosynovitis, a right ganglion cyst, and probable right CTS. Dr. T recommended that claimant avoid repetitive use of her right hand.

Dr. T wrote in November 1999 that claimant has probable right CTS as well as a right de Quervain's tenosynovitis that is most likely caused by repetitive use of her hand at work.

The hearing officer found that claimant's work activities required fine motor movements on a repetitive basis and that claimant was exposed to repetitious, physically traumatic activities at work. The hearing officer concluded that claimant sustained an occupational disease. Carrier contends that the hearing officer erred in determining that claimant sustained an occupational disease. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36) as damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence and determines what facts have been established from the evidence presented. Claimant's testimony and Dr. T's opinion support the hearing officer's findings and conclusion on the issue of compensable injury. We conclude that the hearing officer's decision that claimant sustained a compensable occupational disease is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

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. The hearing officer found that claimant knew that she may have a work-related injury on _____, after an examination by Dr. T and that a reasonable person, in the same or similar circumstances as claimant, would not have realized that they may have had a work-related injury until _____. The hearing officer concluded that the date of injury is _____. Carrier contends that the hearing officer erred in determining that the date of injury was _____. We conclude that the hearing officer's decision on the date of injury is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

Section 409.001(a) provides that, if an injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. The hearing officer found that claimant reported her injury to employer on _____, and that on October 27, 1999, claimant filled out a written form which gave employer additional notice

of injury. The hearing officer concluded that carrier is not relieved of liability under Section 409.002. While we agree with carrier that the return-to-work evaluation form that claimant gave to employer on _____, would not be notice of her claimed 1999 right hand injury because it references a date of injury of _____, the written form claimant gave to employer on October 27, 1999, does mention a work-related right hand injury of _____, and suffices as notice of injury to employer. October 27, 1999, was within 30 days of _____. We conclude that the hearing officer's decision that carrier is not relieved of liability under Section 409.002 is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge