APPEAL NO. 001367

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 June 1, 2000. The hearing officer determined that: (1) the appellant/cross-respondent (claimant) sustained a work-related injury in the form of an occupational disease; (2) the date of injury is _____; and (3) claimant did not provide timely notice of injury and did not have good cause for such failure. Claimant appealed only the adverse determination regarding good cause. Respondent/cross-appellant self-insured ("carrier" or "employer" herein as appropriate) responds that the hearing officer's determination regarding that issue is correct. Even though it prevailed at the hearing, carrier filed a cross-appeal challenging the determination that claimant sustained a work-related injury. The file does not contain a response from claimant to carrier's cross-appeal.

DECISION

We affirm in part and reverse and render in part.

Claimant contends the hearing officer erred in determining that he did not have good cause for failing to report his injury within 30 days. Claimant asserts that: (1) he did not report his injury within 30 days of _____, because he did not think it was serious and because he was preoccupied with his family's health concerns; (2) he had good cause for failing to report the injury until January 1999; (3) his January 1999 report to his employer's risk manager that he had carpal tunnel syndrome (CTS) was a report of injury even though he did not state that it was work related; and (4) employer should have known that it was work related because CTS is an "occupational disease" and claimant had only one occupation and one employer. Claimant also asserts that he had good cause for failing to report the injury within 30 days because he did not know he had to do so.

Generally, a claimant must report an occupational disease injury to his or her employer within 30 days of the date the employee knew or should have known of the condition and that it was work related. Section 409.001(a). The question of good cause for failure to timely report an injury is a question for the fact finder. Texas Workers' Compensation Commission Appeal No. 93550, decided August 12, 1993. Good cause is defined as whether the employee has exercised the degree of diligence of an ordinarily prudent person in prosecuting a claim. Texas Workers' Compensation Commission Appeal No. 92075, decided April 7, 1992. Trivialization of an injury, that is, a bona fide belief that the injury is not serious, may be considered to be good cause for a delay in reporting. Texas Workers' Compensation Commission Appeal No. 91066, decided December 4, 1991. Good cause must continue up to the date when the employee actually notifies the employer. Texas Workers' Compensation Commission Appeal No. 93649, decided September 8, 1993.

The hearing officer determined that claimant knew or should have known that his condition may be work related on _____. The hearing officer determined that because claimant did not report his injury until after 30 days had passed, he did not timely report the injury. The hearing officer also determined that claimant did not have good cause for failing to report his alleged injury within 30 days of _____. The hearing officer determined that October 25, 1999, was the first time claimant reported that his injury was work related.

Claimant said he did not think the CTS was serious or "life threatening." However, there was evidence that claimant's hand condition was serious enough in October 1998 for him to seek medical treatment and that Dr. B told him in late October or early November, after EMG studies, that his right CTS is related to work activities. *See* Texas Workers' Compensation Commission Appeal No. 950407, decided May 1, 1995. We reject claimant's assertion that the hearing officer was required to find that either claimant's family's health problems, or the fact that claimant's CTS was not as "serious" as claimant's other health problems, constituted good cause for late reporting. Determinations of good cause or lack of good cause are fact specific. The hearing officer applied the correct standard in determining whether claimant established good cause and this was a question of fact for him to resolve. It was up to the hearing officer to judge claimant's credibility and to determine what weight to give his testimony. We conclude that the hearing officer's determination regarding good cause is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Regarding claimant's contention that his ignorance of the law constitutes good cause for late reporting, the Appeals Panel has said otherwise. *See* Texas Workers' Compensation Commission Appeal No. 94050, decided February 25, 1994. We reject this contention.

In its cross-appeal, carrier contends the hearing officer erred in determining that claimant sustained an occupational disease injury from repetitive writing at work. Carrier asserts that claimant has an ordinary disease of life, that writing is common to all workers, and that repetitive writing cannot form the basis of a workers' compensation claim. *See, generally,* Texas Workers' Compensation Commission Appeal No. 951129, decided August 22, 1995. We note that carrier prevailed at the hearing and that it is not liable for benefits in this case.

The hearing officer stated in the decision and order that claimant spent 50% of his time *hand writing various documents*. However, claimant's testimony was that he spent 50% of his time "*reviewing and signing* various documentation." After reviewing all the evidence, we conclude that the hearing officer's determinations that claimant performed repetitive, "traumatic" writing that exposed him to trauma to a greater degree than that to which the general public is exposed is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.* Writing is something that is common to the general population. In this case we do not mean to say that

repetitive writing cannot ever cause an occupational disease injury. We reverse the hearing officer's determination that claimant sustained an injury in the form of an occupational disease and render a determination that claimant did not sustain such an injury in the course and scope of his employment.

Carrier complains that the hearing officer determined that claimant had bilateral CTS. However, the hearing officer did not make fact findings regarding bilateral CTS, but found only that claimant sustained an occupational disease injury at work. In any case, as indicated earlier, carrier was relieved of liability regarding this injury.

We affirm that part of the hearing officer's decision and order that determines that claimant did not have good cause for late reporting of his alleged injury. We reverse that part of the decision and order that determines that claimant sustained an injury in the course and scope of his employment and render a determination that claimant did not sustain a work-related repetitive trauma injury.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert Lang
Appeals Judge