APPEAL NO. 001745

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 July 10, 2000. With regard to the three issues before him, the hearing officer determined 1) that the respondent (claimant) had sustained a compensable injury in the form of an occupational (repetitive trauma bilateral carpal tunnel syndrome (CTS)) disease; 2) that the date of injury is _____ (all dates are 1999 unless otherwise noted); and 3) that the claimant timely reported the injury pursuant to Section 409.001.

The appellant (carrier) appealed, contending that the claimant's work was not sufficiently repetitively traumatic and uncommon to the general population to cause a compensable occupational disease injury, that the claimant's work was primarily right-handed but the claimant is claiming a bilateral CTS injury, and that the date of injury as defined in Section 408.007 was "no later than April 14, 1999," and therefore the claimant's report of a work-related injury on June 5, 1999, was untimely. The carrier contends the hearing officer used an incorrect standard in determining the date of injury. The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant had been employed as a "cover planner" by the employer publishing company. The claimant explained in some detail her duties writing, stencil cutting, and "using an Exacto knife cutting out meticulous designs." The hearing officer, in his Statement of the Evidence, recites some of those duties. An occupational disease is "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. . . . The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). A repetitive trauma injury is "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." Section 401.011(36). An employee must prove, by a preponderance of the evidence, the compensability of an occupational disease. Texas Workers' Compensation Commission Appeal No. 960582, decided May 2, 1996, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). "[O]ne must not only prove that recurring, physically traumatic activities occurred on the job, but must also prove that a causal link exists between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared to employment generally." Texas Workers' Compensation Commission Appeal No. 950868, decided July 13, 1995, citing Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). The hearing officer saw and heard the

claimant's description of the claimant's duties and determined them to be sufficiently repetitive and traumatic to constitute an occupational disease. The hearing officer's decision on this point is sufficiently supported by the evidence.

It is undisputed that the claimant was involved in an unrelated motor vehicle accident (MVA) in April 1998 and sustained a cervical spine injury with some problems radiating down her arms. In addition, the claimant had a history and was being treated for osteoarthritis. The claimant said that she saw her primary care physician in November of 1998 with hand and arm complaints but that he "just gave me some more arthritis medicine and said it was my arthritis." The claimant saw Dr. T on April 14 with complaints of "numbness and tingling in the R. greater than the L. hand that began about 6 mos. ago." Although the claimant said that she suspected the condition might be work related, Dr. T only notes that the claimant "thought that she was sleeping on this wrong but the sx. have gotten worse over the course of this wk." The claimant gave a history of dropping things and weakness. Dr. T's assessment included "some of this sounds like CTS," but ordered a cervical spine series. In a progress note of April 30, Dr. T evaluates the "cervical spine series," and continued use of wrist splints but makes no mention of CTS. The claimant testified Dr. T wanted to do more tests. The claimant saw Dr. T again on June 4. The claimant said that in direct response to her questions Dr. T diagnosed bilateral CTS. Dr. T's note of that visit indicates "[the claimant] inquires whether this is likely to be work related. She states that her work station is not ergonomic. That her work aggravates the problems . . . ." It is undisputed that the claimant reported a work-related injury the following day, June 5.

Section 408.007 provides that the date of injury for an occupational repetitive trauma injury "is the date on which the employee knew or should have known that the disease [repetitive trauma] may be related to the employment." The hearing officer notes that the claimant's history of the MVA and osteoarthritis is "relevant" because it delayed the claimant's learning that she had work-related CTS. The carrier argues that the claimant's own testimony indicates that she suspected a work-related injury no later than April 14, and that the hearing officer used the wrong standard by stating "Claimant did not know . . ." when the standard is a reasonable belief that the condition "'may' be work-related." While some of the hearing officer's language did not exactly track the 1989 Act and the claimant's testimony may have been subject to differing interpretations, we hold that the hearing officer's decision is supported by sufficient evidence.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge