APPEAL NO. 002012

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 9, 2000. The hearing officer determined that the respondent/cross-appellant (claimant) sustained an occupational disease, bilateral carpal tunnel syndrome (CTS), in the course and scope of her employment; that the date of injury is _____; that the claimant reported the injury to her employer on April 7, 2000; that she did not timely report the injury to her employer; that she did not have good cause for not timely reporting the injury; that the appellant/cross-respondent (carrier) is relieved of liability because the claimant did not timely report her injury to her employer; that due to the claimed injury, the claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage from April 28, 2000, through the date of the CCH; and that since the claimant did not sustain a compensable injury, she did not have disability. The carrier appealed the determination that the claimant sustained an injury in the course and scope of her employment, contended that the evidence does not support that determination, and requested that the Appeals Panel reverse that determination and render a decision that the claimant was not injured in the course and scope of her employment. The claimant also appealed. She contended that the date of injury is _____; that she timely reported the injury; that she sustained a compensable injury; and that she had disability. The carrier responded, urged that the evidence is sufficient to support the determinations appealed by the claimant, and requested that they be affirmed.

DECISION

We affirm in part and reverse and render in part.

The claimant testified that her job required that she use a computer, that she used a computer about six hours a day, and that she sometimes used a computer more than six hours a day. She said that at the end of November 1999, her left hand started hurting; that she had a broken blood vessel between her index finger and thumb; that she did not remember hitting her hand; and that her left hand was bruised and swollen. A progress note from Dr. P dated November 20, 1999, indicates that the claimant had a bruised left hand and no history of injury. A note from Dr. P dated December 10, 1999, states that x-ray revealed a bone fragment and that the claimant was provided a splint for the thumb and wrist. On January 7, 2000, Dr. P reported that the claimant was still having pain and some swelling in the left hand and that she was referred to Dr. T, a hand and orthopaedics surgeon.

The claimant was seen by Dr. T on January 10, 2000. The report of Dr. T says that the claimant was complaining of pain in her left thumb for about six weeks; that she had no history of trauma, falls, or accidents; that she just noticed that a blood vessel over her thumb "had busted" about six weeks ago; that her doctor had x-rays taken and told her that she had a chip at the base of her thumb; that for one year she has done data entry, typing, and writing in her job; that x-ray showed degenerative joint disease but no fracture or

dislocation; that his diagnosis was De Quervain's disease (a disease involving a tendon); that the claimant was given options; that she opted for a local corticosteroid injection, a brace, and nonsteroidal anti-inflammatory medication; and that she will be seen again in three weeks. The claimant testified that she had been told that the injection would help, but it did not; that she had a lot of swelling and pain in her hand; that she went back to Dr. T's office on _____; that she wanted to see the doctor, but was not able to do so; that a nurse talked with Dr. T and the nurse told the claimant to limit her work on a computer to six hours a day to see if that helped; that she was not told that work on a computer caused her condition; and that she did not think that her left-hand problem was caused by her work. An unsigned certificate of work from Dr. T dated _____, states that the claimant should be excused from work on January 13, 14, and 17, 2000, and that use of a keyboard should be limited to six hours of intermittent keying per day. In a progress note dated January 31, 2000, Dr. T stated that the claimant's pain had improved even though she still had significant symptoms; that she should continue using the nonsteroidal anti-inflammatory medication and the brace; that physical therapy was prescribed; that his diagnosis was De Quervain's disease that is resolving and CMC arthritis; and that she had "over sympathetic activity" in her left hand. Dr. T continued to treat the claimant and her keyboarding was limited to four hours a day. The claimant said that she was told that keyboarding could aggravate her condition. In a report dated April 24, 2000, Dr. T stated that the claimant still had pain in her left wrist; that she reported that her knuckles felt like someone was "squashing them with a hammer" with a feeling of numbness also; that most of her pain was over the CMC joint; that his impression was nonspecific tendinitis in the hand with CMC arthrosis; and that she will continue with a nonsteroidal anti-inflammatory medication and another course of therapy.

The claimant testified that Dr. H, a neurologist, had been treating her for migraine headaches; that on April 6, 2000, she saw Dr. H for the headaches and mentioned to Dr. H that she was having funny feelings in her hand; that Dr. H told her that she, Dr. H, thought that the claimant had CTS; that Dr. H asked her what type of work she did; that she told Dr. H that she worked on computers; and that tests were performed by a nurse. A report from Dr. H dated April 30, 2000, states that the nerve conduction studies and electromyography performed on April 6, 2000, were consistent with bilateral CTS and that clinical correlation was advised. On April 28, 2000, Dr. G, a chiropractor, began treating the claimant for bilateral CTS and took her off work.

We first address the determination that the claimant's date of injury is _____. 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. Section 409.001 provides that an employee shall notify the employer of an injury that is an occupational disease 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. At the CCH, the carrier contended that reducing the time that the claimant should work using a keyboard to six hours a day and the claimant's knowing that her work could aggravate her condition were sufficient to show that the claimant knew or should have known that the injury may be related to her work. The claimant contended that a

doctor could reduce the time spent doing a certain type of work for a condition that was not related to work to keep from aggravating the condition and to permit it to heal and that she did not know that her condition was related to her work until April 6, 2000, when she was told that she had CTS.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

A concrete diagnosis of a condition is not required to establish a date of injury for an occupational disease. Texas Workers' Compensation Commission Appeal No. 972647, decided January 28, 1998. A date of diagnosis is not determinative of the date an employee knew or should have known that a CTS condition may be related to work; however, a hearing officer may consider that in determining the date of injury. Texas Workers' Compensation Commission Appeal No. 980363, decided April 8, 1998. In Texas Workers' Compensation Commission Appeal No. 982114, decided October 14, 1998, the Appeals Panel stated that a doctor diagnosed the claimant's condition as CTS; restricted her activities; that the doctor had not yet related it to work; that medical knowledge will not be imputed to a claimant; and affirmed as the date of injury the date the claimant learned of the work-related nature of the injury from a discussion with another patient in physical therapy. In Texas Workers' Compensation Commission Appeal No. 990903, decided June 9, 1999, the Appeals Panel stated that a claimant will not be held to the standard of a doctor's knowledge of causation and reversed a hearing officer's determination of the date of injury. In Texas Workers' Compensation Commission Appeal No. 982314, decided November 2, 1998, the Appeals Panel reversed the determination of a hearing officer on the date of injury for a repetitive lifting injury, stating that there was no evidence that the claimant knew or should have known that the injury may be work-related until the claimant was notified by the doctor. Confusion about the cause of a condition may be relevant. In Texas Workers' Compensation Commission Appeal No. 960238, decided March 21, 1996, the Appeals Panel stated that the date of first symptoms does not necessarily constitute the date of injury, that the claimant was confused about the cause of his pain because his doctor had told him that he had arthritis, and that the evidence was sufficient to support a determination that the claimant's date of injury was the date the claimant's doctor told him he did not have arthritis. In another CTS case, the hearing officer determined that the date of injury was February 8, 1996. The Appeals Panel stated that medical records with dates earlier than March 2, 1998, referred to arthritis and did not mention a work-related cause; said that the claimant's testimony that she did not suspect a work-related cause until March 2, 1998, was uncontroverted; and rendered a decision that the date of injury was March

2, 1998. Texas Workers' Compensation Commission Appeal No. 992486, decided December 29, 1999. In Texas Workers' Compensation Commission Appeal No. 992520, decided December 31, 1999, the hearing officer stated that although none of the medical records opine that the CTS was caused by the claimant's work activities, her testimony regarding the lack of other activities that could have caused her condition should have made her aware of the work-related nature of her problems at the time they were diagnosed. The hearing officer determined that the date of injury was March 6, 1998, the date of diagnosis of CTS. The Appeals Panel stated that there was no evidence to controvert the claimant's testimony that it was not until May 27, 1999, that she began to consider her CTS to be work related and reversed the determination of the hearing officer and rendered a decision that the date of injury was May 27, 1999.

In the case before us, the first medical record mentioning CTS was made after the claimant was seen by Dr. H on April 6, 2000. Prior to that, the records of Dr. T, a hand surgeon, included various diagnoses, mentioned that the claimant uses a keyboard, but did not state that her condition is work related. The hearing officer's determination that the claimant's date of injury is _____, is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and is reversed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We render a decision that the date of injury is April 6, 2000. The hearing officer determined that the claimant notified the employer of the injury on April 7, 2000. We reverse the determination that the carrier is relieved of liability because the claimant did not timely notify the employer of the injury and render conclusions of law and a decision that the claimant timely notified the employer of the injury and that the carrier is not relieved of liability.

We next address the determination that the claimant sustained a work-related repetitive trauma injury, bilateral CTS. In its appeal, the carrier states that the evidence does not support that determination; that the report of Dr. T dated January 10, 2000, states that the claimant reported no history of trauma, falls, or accident; that as early as September 2, 1999, Dr. H noted that the claimant had arthritis; that there is no medical evidence to support any activity the claimant engaged in at work caused any problems with the claimant's hands; and that the claimant presented no medical evidence to support causation by her work. In numerous decisions, including Appeal No. 980363, *supra*, the Appeals Panel has stated that medical evidence is not required to prove that a claimant sustained CTS in the course and scope of employment. The claimant was diagnosed with CTS and the report states that clinical correlation is advised. The record does not contain a report from a doctor opining that her CTS was caused by her work. The claimant testified that she used a keyboard about six hours a day until that time was reduced after she began having problems with her hand. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). That a different factual determination could have been made based on the same evidence is not a sufficient basis to overturn a factual

determination of a hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 2000.

The determination that the claimant sustained a work-related repetitive trauma injury, bilateral CTS, is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and is affirmed. Cain, *supra;* Pool, *supra*. Since we rendered a decision that the carrier is not relieved of liability and affirmed the determination that the claimant sustained an injury in the course and scope of her employment, we render a decision that she sustained a compensable injury. We reverse the conclusion of law and the decision that the claimant did not have disability; and, based on the finding of fact that the claimant was unable to obtain and retain wages equivalent to her preinjury wage for a specific period of time, we render a decision that the claimant had disability beginning April 28, 2000, the day the claimant was taken off work by Dr. G, and continuing through the date of the CCH.

Tommy W. Lueders
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Thomas A. Knapp
Appeals Judge