

APPEAL NO. 002056

On August 1, 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 the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the date of the claimed injury was _____; that the claimant did not timely report the claimed injury to the employer; that good cause did not exist for the claimant's failure to timely notify her employer of the claimed injury; and that the claimant has not had disability. The claimant requests that we reverse the hearing officer's decision that she did not sustain a compensable injury in the form of an occupational disease; that the date of injury was _____; that the claimant has not had disability; and that the claimant failed without good cause to timely report the injury to the employer. The respondent (self-insured) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The claimant testified that she has been a school teacher for 27 years, the last 23 years with the employer's school district. Beginning in 1996, she was employed as a Content Mastery teacher helping students on an individual basis with assignments and taught one class each day of study skills. The claimant said that for the last couple of years she has had numbness in her hands and problems with her wrists and arms when writing on the chalkboard and grading papers.

The claimant went to Dr. K on _____, for complaints of numbness in her hands. The claimant said that Dr. K told her that she had fluid buildup and arthritis and did not tell her that she had carpal tunnel syndrome (CTS) nor did he tell her that her hand problems were work related. According to Dr. K's notes of _____, he diagnosed the claimant as having CTS that day. In response to written questions, Dr. K noted that he discussed the CTS diagnosis with the claimant on _____.

The claimant was seen by Dr. A, on February 21, 2000, and Dr. A diagnosed the claimant as having bilateral CTS. Dr. A noted that the claimant told him that in the last couple of years she had noticed numbness, tingling, and pain in her wrists due to her duties at work and that her job duties included frequent typing and writing. Dr. A opined that the claimant's CTS is due to repetitive motions at work and he took the claimant off work. The claimant said that prior to February 21, 2000, no doctor had told her that she had CTS. The claimant has continued to treat with Dr. A for her CTS and Dr. A has continued to recommend that the claimant stay off work. The claimant has not worked since February 22, 2000.

Dr. A referred the claimant to Dr. T, who performed a nerve conduction velocity study on the claimant's upper extremities on March 9, 2000, and interpreted the study as

showing entrapment or injury to the bilateral median nerve at the wrist or forearm and entrapment or injury of the ulnar nerve at the left elbow.

Dr. A referred the claimant to Dr. AN, who saw the claimant on May 9, 2000, and wrote that the claimant had had numbness, pain, and tingling in her wrists due to her work duties for the last couple of years. Dr. AN wrote that based on the claimant's history and clinical findings, the claimant sustained CTS as a result of her work-related injury.

CH, the principal at the school where the claimant taught, testified that the claimant's job required minimal typing and writing and that the claimant had had a very light teaching load for the last three years. CH and the claimant testified that the claimant reported her injury to CH on February 22, 2000.

The claimant claimed that her bilateral CTS was caused by repetitive work activities; that the date of injury was _____; that she has had disability since _____; and that she gave timely notice of injury. She also claimed that if the hearing officer found the date of injury to be _____, as contended by the carrier, then she had good cause for not reporting the injury until February 22, 2000, because Dr. A told her on _____, that her CTS was work related.

Section 401.011(36) defines repetitive trauma injury 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. 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(a) provides that, if the 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 on _____, the claimant knew or should have known that her bilateral CTS may be related to her employment; that the claimant did not injure her wrists as a result of repetitive trauma while working for the employer; that in delaying reporting her claimed injury in excess of 30 days from _____, the claimant did not exercise the degree of diligence which an ordinarily prudent person would have exercised under the same or similar circumstances; and that the claimant's inability to obtain and retain employment at wages equivalent to her wages prior to _____, is not because of a compensable injury. The hearing officer concluded that the claimant did not sustain a compensable injury in the form of an occupational disease; that the date of injury was _____; that the claimant did not timely report an injury to the employer; that no good cause existed for the claimant's failure to timely notify the employer of her injury; and that the claimant has not had disability.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The conflicting evidence was for the hearing officer to resolve as the trier of fact. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are 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

Tommy W. Lueders
Appeals Judge