APPEAL NO. 002266

Following a contested case hearing held on August 29, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the respondent/cross-appellant (claimant) did not sustain an occupational disease injury (repetitive trauma); that the date the claimant knew or should have known that his carpal tunnel syndrome (CTS) was related to his work is _____; that the appellant/cross-respondent (self-insured employer) is not relieved of liability for the claim pursuant to Section 409.001 because of the claimant's untimely reporting of the injury to the employer; and that the claimant did not have disability. The self-insured employer filed an appeal, conditioned on the claimant's filing an appeal, which challenges the date of injury and timely notice determinations for insufficient evidence. The claimant filed an appeal disputing the sufficiency of the evidence to support the determination that he did not sustain a compensable occupational disease injury.

DECISION

Affirmed.

The claimant testified that prior to _____, he worked generally as a maintenance worker for the self-insured employer full-time for about a year and before that, part-time for about a year; that his duties included working on underground water and sewer taps and leaks, grinding tree branches, and mowing open areas; that he mowed several days a week for five or six hours during the growing season; and that while he sometimes used a riding mower, most of his mowing was done driving an old tractor which pulled a mower. The claimant further testified that the tractor, which was old and had no power steering, was very hard to turn; that he had to do a lot of turning around trees and other objects when mowing with it; and that early in the summer of 1999 he began to experience pain in both hands. He indicated that for a couple of months prior to _____, he experienced shoulder and hand pain after mowing but did not know what he had and did not connect it to the mowing. He said that the pain became more intense and he went to Dr. DL, who told him he had arthritis; that as the pain intensified a friend recommended that he see Dr. J; and that on _____, he saw Dr. J, who inquired about his work, told him he had CTS, took him off work, and referred him to Dr. D. The claimant also said that he did not know he had CTS until Dr. J told him; that on _____, he advised Ms. A, the city secretary, that Dr. J had taken him off work; and that he has not worked since that date.

Mr. S testified that he is the self-insured employer's superintendent of public works and was the claimant's supervisor; that the claimant and another employee performed the mowing from late April to early October; that the claimant mowed one or two days a week for five to six hours a day; and that he used the old tractor for most of his mowing. Mr. S said he was aware of the claimant's having pain and swelling in his hands during the summer of 1999 and recommended he see a doctor for it in early September 1999. He

said that the date of September 23, 1999, was stated on the Employer's First Report of Injury or Illness (TWCC-1) as the date the self-insured employer was notified of the claimed injury because "that's when [Dr. J] called and said it was a work-related injury." He said that Dr. J spoke with Ms. A.

Dr. D's October 15, 1999, report of EMG and nerve conduction studies stated that the studies were compatible with moderate to severe acute bilateral CTS. Dr. LL, who conducted an independent medical examination for the self-insured employer, reported on January 27, 2000, that he sees numerous patients in the claimant's age category who do not drive tractors or perform any significant labor and who yet develop CTS; that CTS develops in a significant percentage of the population whether or not they work; and that there is no scientific evidence in this case defining a direct cause-effect relationship. He further noted that the claimant had no direct trauma and could have developed CTS "absent any type of work at all."

In addition to the dispositive conclusion on the injury issue, the claimant specifically disputes the finding that his bilateral hand condition did not arise from repetitive physically traumatic activities which occurred over time and arose out of the course and scope of his employment with the self-insured employer. The self-insured employer disputes findings that the date of injury is _____, and that Dr. J's notification to the self-insured employer on September 23, 1999, constituted timely notice because the claimant acknowledged that for a month or two before seeing Dr. J on _____, he had pain in his hands after mowing with the old tractor. The carrier contends that the date of injury "is at least one to two months earlier than found by the Hearing Officer" because the claimant knew or should have known at that time his pain and swelling was caused by his turning the tractor when mowing. The carrier further contends that with an earlier date of injury mandated by the evidence, the reporting of the injury to the self-insured employer on September 23, 1999, would be untimely. *See* Section 408.007 concerning the date of injury for occupational diseases and Sections 409.001 and 409.002 concerning the provision of notice of injury to the employer.

The claimant had the burden to prove that he sustained the claimed injury and the date of the injury, that he had disability as that term is defined in Section 401.011(16), and that he provided the self-insured employer with timely notice of the injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer does not indicate whether he found no compensable CTS injury because he viewed the evidence as failing to establish that the claimant's hand motions driving the tractor were sufficiently repetitive to have caused the CTS, or because the claimant did not adduce expert medical evidence relating the CTS to his work, or because he accepted Dr. LL's opinion on the matter. In any event, we cannot say that the determination is against the great weight of the evidence and because the finding of a compensable injury is a prerequisite to a finding of disability, we likewise find no error in that determination. As for the date of injury and timely notice findings, the hearing officer could conclude from the evidence that having been earlier told by Dr. DL that he had an ordinary disease of life, the claimant did not know nor should he have known that his hand symptoms were caused by his work until _____, when Dr. J discussed his work with him and related the CTS to his work.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge