

APPEAL NO. 002792

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 November 9, 2000. With regard to the four issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury; that the date of the claimed injury is _____ (all dates are 2000 unless otherwise noted); that the respondent (carrier) is relieved of liability because the claimant failed to give timely notice of the alleged injury; and that the claimant does not have disability.

The claimant appeals, asserting that she sustained a repetitive trauma injury in the form of carpal tunnel syndrome (CTS) as evidenced by her doctors; that the date of injury was _____; that when she gave a hospital clinic note (which has an impression of CTS, along with other matters) this constituted notice of a claimed work-related injury; and that she has had disability from _____ and continuing. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The appeals file does not contain a response from the carrier.

DECISION

Affirmed.

The claimant was employed as a customer service representative for a telecommunications company. The claimant eventually testified, and medical reports indicate, that the claimant had been experiencing numbness and weakness in her left hand and wrist for six months prior to _____; that she had realized she had a "real problem," which was made worse by work, in January 2000; and that she thought she needed to see a doctor about 30 days before she actually did, i.e. January 21. The claimant had some job performance problems and had been suspended for three days on February 8. On February 20, the claimant called her supervisor and told the supervisor that she would not be in on _____ because she had a doctor's appointment. The claimant was seen in a hospital clinic on _____, and testifies that on that day she gave her supervisor the report from the clinic. The first page is dated _____, states that the claimant was seen that day, and releases the claimant back to work on _____. The form is signed by a physician's assistant (PA). The second page is a form report, signed by the PA, which addresses a number of intestinal problems, which the claimant agrees was the focus of the examination. The claimant said that she also mentioned her wrist, and under "impressions" the PA writes "[CTS] [left] wrist." The claimant contends this is when she first became aware that she may have had a work-related injury. The claimant testified that she gave these forms to her supervisor without explanation other than "that was my admission to the fact that I had a physical problem." The claimant said that she never had a chance to tell her supervisor the injury was work-related because she was terminated for poor job performance. The claimant's supervisor

testified that she was not aware that the claimant was claiming a work-related injury until August or September and that she did not think the claimant did enough key stroking to develop CTS.

The nature and extent of the claimant's key stroking and job duties were discussed in some detail by both the claimant and her supervisors. The claimant began treating with Dr. P, a chiropractor, and Dr. D. Dr. D, in a report dated May 23, comments that there are positive Phalen's signs but negative Tinel's signs. No EMG or nerve conduction studies were performed. Dr. P, in a report of a March 16 office visit, states, "It is my opinion that the injury is due to repetitive motion of [claimant's] job duties." The carrier argues that the medical evidence from Dr. D and Dr. P does not meet the standards enunciated in Merrell Dow Pharmaceuticals, Inc. v. Havner, 953 S.W.2d 706 (Tex. 1997), cert denied 523 U.S. 1119. The hearing officer comments:

Even without regard to the carrier's more general Havener v. Merrill Dow - based objection, the evidence here regarding the exact diagnosis and etiology of the claimant's problems is simply not persuasive in sustaining the claimant's assertions. It should be noted that, although the asserted injury is bilateral CTS, only the left extremity is significantly noted in the medical records.

On the issue of the date of injury, Section 408.007 provides that the date of injury for an occupational disease (which includes repetitive trauma) is the date on which the employee knew or should have known the disease may be related to the employment. The hearing officer found that the claimant reasonably should have known her condition was significant and possibly work-related by January 21, based on her own testimony that she knew she had a "real problem" at that time.

On the notice issue, even the claimant's own testimony establishes that she never reported a work-related condition to her supervisor and relies entirely on the clinic forms completed by the PA. The hearing officer found that the claimant has never reported a work-related injury to her supervisor.

On the disability issue, because we are affirming the hearing officer's decision that the claimant did not have a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

Upon review of the record submitted, we find no reversible error and 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:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge