

## APPEAL NO. 002795

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 6, 2000. The hearing officer determined that the respondent (claimant) sustained a repetitive trauma injury to his shoulder with a date of injury of \_\_\_\_\_, that he timely reported the claim, that he did not make an election of remedies by filing some medical treatments on his group health insurance, that the appellant (self-insured) timely disputed the compensability of the injury, and that the claimant had disability from June 19 through November 6, 2000.

The self-insured had appealed, and argues that the date of injury should be "in \_\_\_\_\_" and further that there was no timely reporting within thirty days of this "date." The other findings, including a decision that the claimant sustained a repetitive trauma injury, are not appealed. The claimant responds that the decision should be affirmed.

### DECISION

We affirm the hearing officer's decision.

The claimant was a ten-year employee of the self-insured. He was switched to a job loading cores onto a paper-winding machine sometime in \_\_\_\_\_, and soon after he began to feel sore all over. The claimant continued to work, however, but when the pain in his left shoulder became dramatically worse on May 22, he decided to seek medical treatment. The claimant had had shoulder surgery a few years before this job was undertaken. The claimant said that it was after talking to his doctor, Dr. A, that he understood he could have a new injury to his shoulder because of his new job.

The claimant said that he reported his injury to Mr. H on \_\_\_\_\_, as well as the company nurse Ms. C. The claimant said that he told Ms. C he would not want to file a workers' compensation claim if they could find other work for him to do. Ms. C's notes from that date reflect that the claimant asked to be taken off the paper loading machine as repetitive work could reinjure his shoulder. On June 2, 2000, Mr. H had a conversation with Dr. A about what his restrictions would be as far as assigning new work. The notes from the company dated June 20, 2000, are labeled as "occupational visits" and show that the claimant on that date presented to the workers' compensation office stating that he wished to file a claim for injury to his shoulder due to handling the cores for the paper-winding machine. Dr. A opined that the claimant had aggravated his shoulder condition while working on the paper-winding machine.

The Appeals Panel has noted that the date of injury for an occupational disease is not necessarily the date of the first symptom and that the time period for notice begins to run when a reasonable person would recognize the nature, seriousness, and the work-

related nature of an injury. Texas Workers' Compensation Commission Appeal No. 982944, decided January 21, 1999. The hearing officer did not err in determining that the claimant's date of injury was \_\_\_\_\_, when he first went to his doctor and a work-related connection to his shoulder pain was drawn, or that timely notice was given on June 20, 2000. Although the claimant testified that his pain began sometime in \_\_\_\_\_, when he changed jobs to a more repetitive task than he had been doing, the hearing officer was not required to believe that the claimant should have known at that point (especially in light of the fact that he had a prior shoulder injury and had just changed jobs) that he had a new injury that may be related to his employment.

There would be no evidence to support any specific date of injury in \_\_\_\_\_ even if the carrier's position had merit; the carrier had the burden to counter the claimant's prima facie case on date of injury with its own evidence of an alternative date. Because the appeal of the timely reporting finding is based upon the self-insured's argument that the date of injury was earlier than \_\_\_\_\_, we affirm the hearing officer's decision and order on both appealed points.

---

Susan M. Kelley  
Appeals Judge

CONCUR:

---

Gary L. Kilgore  
Appeals Judge

---

Robert W. Potts  
Appeals Judge