

APPEAL NO. 002796

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was commenced on September 7, 2000, with a second session held on November 6, 2000. The hearing officer resolved the disputed issues of injury, timely report of injury, and disability by deciding:

1. The respondent (claimant) suffered a compensable injury in the form of an occupational disease.
2. The claimant had good cause for failing to timely report her injury.
3. The claimant had disability from February 11, 2000, until April 3, 2000.

The appellant (carrier) filed a request for review, contending that there was insufficient evidence presented at the CCH to establish that the claimant suffered a compensable injury. The carrier implicitly raises a question concerning whether the claimant's injury resulted in disability. The main thrust of the carrier's appeal is that the claimant, without good cause, did not timely report her injury. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

There was conflicting evidence presented at the CCH on the appealed issues. The claimant testified that she had worked for the employer for over 20 years, assembling and testing circuit boards. The claimant also testified that this work required the continuous use of both her hands. From April through December 1999 the claimant treated with Dr. T because she was having problems with a finger on her right hand. The claimant stated that she initially thought the problem was related to arthritis or diabetes. The claimant was laid off work on August 31, 1999. On February 1, 2000, the claimant was examined by Dr. M, who diagnosed the claimant with bilateral carpal tunnel syndrome (CTS) and who performed surgery on the claimant's right hand on February 11, 2000. The claimant testified that after being diagnosed with CTS, she tried to report a job-related injury to her employer, but she had difficulty finding a person to whom to report her injury as the employer's business had been sold after the claimant was laid off. It is undisputed that the CTS was reported to the carrier as a work-related injury on _____.

The question under our standard of review is whether the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Applying this standard, we find sufficient evidence to support the hearing officer's finding that the claimant suffered a compensable injury in the form of an occupational disease.

The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. 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 408.007. The 1989 Act provides that a determination by the Texas Workers' Compensation Commission that good cause exists for failure to provide notice of injury to an employer in a timely manner or that the employer has actual knowledge of the injury can relieve the claimant of the requirement to report the injury. Section 409.002.

In the present case, the hearing officer found that the claimant had good cause for not reporting her injury until _____, because she only first knew it was reasonably related to her employment on _____, and after this she tried to report the injury but was unable to find an agent of the employer to whom to report it. The carrier argues that the claimant should have known earlier than _____, that her injury was related to her employment. The carrier contends that the claimant should have realized that her problems were related to her job when she sought treatment from Dr. T. When the claimant first knew, as a reasonably prudent person, that her hand condition might be related to her employment is a question of fact. Applying our standard of review, we find that the hearing officer's finding that the date the claimant first knew that she had a work-related injury was _____, is sufficiently supported by the evidence.

The carrier's implicit challenge of the hearing officer's resolution of the disability issue hinges on its argument that the claimant did not suffer a compensable injury and that the carrier was relieved of liability due to the claimant's failure to timely report her injury. Having rejected the carrier's attack on the hearing officer's determinations regarding injury and good cause for untimely reporting, we likewise reject its challenge of the hearing officer's determination regarding disability.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeal Judge

Robert W. Potts
Appeals Judge