APPEAL NO. 010012

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 held on December 12, 2000. The hearing officer resolved the disputed issues of injury, date of injury, timely report of injury, and election of remedies by deciding:

1. The respondent (claimant herein) sustained a compensable injury in the form of an occupational disease.

2. The date of the claimant's occupational disease was _____.

3. The claimant timely reported her injury to her employer.

4. The claimant is not barred from receiving workers' compensation benefits because of an election of remedies.

The appellant (self-insured herein) filed a request for review, contending that the hearing officer erred in his resolution of the injury, timely report of injury, and election of remedies issues. The self-insured also points out that the hearing officer's decision contains a discrepancy regarding the date of injury and argues that in one finding the hearing officer uses the date _____, when he intended to use the date _____. The claimant responds that there is sufficient evidence in the record to support the hearing officer's decision.

DECISION

We reform the decision of the hearing officer to read "_____" wherever it reads "_____." 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 as reformed.

There was conflicting evidence presented at the CCH on the issue of injury. The claimant testified that her job involved substantial typing and that for a number of years her typewriter was defective, requiring her to use extra force on the keys. The claimant testified that in _____ she began feeling pain and cramps in her hands and reported her pain to her supervisor as well as her belief that it was the result of the problems she was having with the typewriter. The claimant was later diagnosed with carpal tunnel syndrome (CTS) and presented medical evidence relating this condition to her work. The question under our standard of review was 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 sustained a compensable injury in the form of an occupational disease. Neither party appeals the issue of the claimant's date of injury. The self-insured in fact indicates

that it agrees with the _____, date found by the hearing officer, but requested we correct typographical errors in the hearing officer's decision, which we have done.

As to whether the claimant timely reported her injury, this issue also turns upon a factual determination with the claimant testifying that she reported an injury on _____, and the claimant's supervisor testifying that the claimant merely complained about a defective typewriter. It was the province of the hearing officer as the finder of fact to weigh the evidence and resolve the conflicts in the evidence. Applying our standard of review we find sufficient evidence to support his determination that the claimant timely reported her injury.

We find that the hearing officer did not err in finding that the claimant is not barred from workers' compensation benefits by an election remedies. There was evidence that the claimant initially filed against her group health insurance carrier, rather than against the self-insured to obtain medical treatment for her CTS. The hearing officer found that the self-insured did not suffer a manifest injustice as a result of the claimant's use of her group health insurance after the date of injury and before asserting her claim for workers' compensation benefits. In Bocanegra v. Aetna Life Insurance Company, 605 S.W.2d 848 (Tex. 1980) (hereinafter Bocanegra), the Texas Supreme Court stated that the election of one legal remedy may constitute a bar to relief under another remedy "when (1) one successfully exercises an informed choice (2) between two or more remedies, rights, or states of facts (3) which are so inconsistent as to (4) constitute manifest injustice." This requires the self-insured to prove manifest injustice. The self-insured argues that notwithstanding our decision in Texas Workers' Compensation Commission Appeal No. 990525, decided April 16, 1999, this is not the case. The self-insured in fact argues that our decision in Appeal No. 990525 was incorrect. We recently reiterated the necessity of proving all four prongs of the Bocanegra test, including proving manifest injustice, in our decision in Texas Workers' Compensation Commission Appeal No. 002763, decided January 11, 2001. We find no error in the hearing officer's reliance upon the decision of the Supreme Court in Bocanegra and on our prior decision in resolving the issue of election of remedies.

The decision and order of the hearing officer are affirmed as reformed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge