

APPEAL NO. 011123
FILED JULY 02, 2001

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 May 2, 2001. With regard to the three issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable repetitive trauma injury (bilateral carpal tunnel syndrome (CTS)); that the date of injury is _____; that the respondent carrier (carrier L) is relieved of liability because it did not have coverage for the employer on the date of injury; and that the appellant carrier (carrier T) is not relieved of liability under Section 409.002 because the claimant timely notified her employer of her injury pursuant to Section 409.001.

Carrier T appealed, asserting that pursuant to Section 408.007 (and Section 409.001(a)(2)) the claimant "knew her condition was related to her employment in _____." Carrier T asserts that with a date of injury of _____, the claimant did not timely report her injury on _____, and that it should be relieved of liability. Carrier L responds, urging affirmance. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant was employed as a "customer care associate" whose duty was to answer telephone calls and type data from each telephone call into a computer. The claimant testified that she handled between 78 and 207 calls a day.

The background facts are undisputed and include that the claimant began having on-and-off pain in her hands and wrists in _____ and _____; that she was aware that the pain was related to her work; that the pain was relieved by soaking her hands and wrists and taking Tylenol; that she did not miss any time from work (during the _____ time frame); and that she did not go to a doctor as the pain always subsided. The claimant testified that during the _____ time frame when other coworkers complained of hand pain she told them "don't be such a baby about it." Sometime prior to _____, the employer changed workers' compensation insurance carriers from carrier L to carrier T. It is also undisputed that in the summer of 2000 the employer came out with a new product, which increased the work load of the customer care associates. The claimant testified that the week before _____, her hand and wrist pain became much more intense and constant. The claimant was unable to continue working on _____; left work early; was seen in a hospital emergency room that evening; and was subsequently diagnosed as having bilateral CTS, right worse than left. The claimant notified the employer of her injury on _____. Dr. L has recommended carpal tunnel release surgery.

Section 408.007 provides that the date of injury for an occupational disease, which includes a repetitive trauma injury “is the date on which the employee knew or should have known that the disease may be related to the employment.” Carrier T argues that the claimant’s testimony shows that she knew her pain, or her “condition,” was related to her employment in _____. The claimant and carrier L contend that the claimant attributed her pain in _____ to “muscle fatigue” or just soreness from working hard, which she was able to relieve by home treatment, and that the claimant did not know that she had a “disease” or repetitive trauma injury until told by doctors on _____. The hearing officer accepted the claimant’s and carrier L’s interpretation of the events and we cannot say that that interpretation is wrong as a matter of law.

Accordingly, the hearing officer’s decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge