

APPEAL NO. 011181  
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 was held on May 8, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) had two distinct occupational diseases with two distinct dates of injury. Regarding the first occupational disease, a right ganglion cyst, the hearing officer determined the following:

1. The claimant sustained an occupational disease, an upper extremity ganglion cyst, on \_\_\_\_\_;
2. The claimant failed to report the injury timely without good cause; and,
3. The claimant had no disability.

Regarding the second occupational disease, right epicondylitis, the hearing officer determined the following:

1. The claimant sustained an occupational disease, right epicondylitis, on \_\_\_\_\_;
2. The claimant timely reported the injury;
3. The claimant had no disability;
4. The [city 1] field office is ordered to create a separate claim file for the right epicondylitis injury of \_\_\_\_\_, and
5. The respondent (carrier) is ordered to pay medical benefits for the occupational disease of right epicondylitis.

The claimant appeals the hearing officer's determination that the date of injury for the ganglion cyst was \_\_\_\_\_; that the claimant did not timely notify her employer of the ganglion cyst injury; and that the claimant did not have disability from the ganglion cyst or the right epicondylitis from November 7, 2000, through January 23, 2001. The carrier urges affirmance.

DECISION

The hearing officer's decision is affirmed.

The claimant asserts on appeal that the hearing officer erred in determining that the date of injury for the ganglion cyst is \_\_\_\_\_. The evidence sufficiently supports the hearing officer's determination, based on the claimant's recorded statement, that she knew or should have known that the ganglion cyst may be related to her job duties on \_\_\_\_\_. See Section 408.007.

The claimant also asserts that the hearing officer erred in determining that the claimant did not timely notify her employer of the ganglion cyst injury. Section 409.001(a) provides that an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the injury occurs or if the injury is an occupational disease, the employee knew or should have known that the injury may be related to the employment. A Texas appellate court held that the date of injury is when the injured employee, as a reasonable person, could have been expected to understand the nature, seriousness, and work-related nature of the disease. Commercial Insurance Co. of Newark, N.J. v. Smith, 596 S.W.2d 661 (Tex. Civ. App.-Fort Worth 1980, writ ref'd n.r.e.) The hearing officer determined that by \_\_\_\_\_, a reasonable person in the same situation as the claimant would have attributed the development of the cyst and the symptoms that emanated from the cyst to the performance of her employment duties. The claimant contends that she first knew that the ganglion cyst was a work-related injury when she was informed by her doctor, Dr. P, on \_\_\_\_\_, and that she had earlier chosen the date of \_\_\_\_\_, because it was her father's birthday. The Appeals Panel has held that while a definite diagnosis from a doctor is not required, neither is the employee held to the standard of a doctor's knowledge of causation. Texas Workers' Compensation Commission Appeal No. 000743, decided May 18, 2000. See also Texas Workers' Compensation Commission Appeal No. 91097, decided January 16, 1992. The evidence sufficiently supports the hearing officer's determination that the claimant knew or should have known that the ganglion cyst was related to her employment based on the enlargement of, and pain from, the cyst when she would push food and beverage carts down the aisles of airplanes.

The claimant further asserts on appeal that the hearing officer erred in determining that she did not have disability from the ganglion cyst or the right epicondylitis from November 7, 2000, through January 23, 2001. Section 401.011(16) provides that disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. The evidence sufficiently supports the hearing officer's determination. The medical records in evidence did show that the claimant was unable to work because of the surgery and recovery from her ganglion cyst. However, because the claimant failed to timely report this injury to the employer, it is not compensable and she could not have disability therefrom. Neither the medical records nor the claimant's testimony establish that the claimant was unable to work because of the right epicondylitis.

The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. (Section 410.165(a)). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Judy L. S. Barnes  
Appeals Judge