

APPEAL NO. 011325
FILED JULY 30, 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 25, 2001. On the issues before him, the hearing officer determined that (1) the respondent (claimant) sustained a compensable repetitive trauma injury in the form of right carpal tunnel syndrome (CTS); (2) the claimant's date of injury was _____; and (3) the claimant had disability from _____, through the date of the hearing. The appellant (self-insured) appeals each of the hearing officer's determinations and requests that the Appeals Panel find that the claimant failed to notify the self-insured of the occupational disease within 30 days, that the claimant failed to file a claim for compensation within one year of the date of injury, and that the self-insured is relieved of liability for the claimed injury. The claimant urges affirmance of the hearing officer's decision and order.

DECISION

Affirmed.

Compensable Injury

The hearing officer did not err in determining that the claimant sustained a compensable repetitive injury in the form of right CTS. The claimant had the burden to prove that he suffered damage or harm to the physical structure of the body as a result of repetitious, physically traumatic activities that occurred over time and arose out of and in the course and scope of employment. See Texas Workers' Compensation Appeal No. 992486, decided December 29, 1999; Section 401.011(34) and (36). Conflicting evidence was presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex.App.-Houston [14th Dist.] 1984, no writ)). The hearing officer's determination is not 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 (Tex. 1986).

Date of Injury

The hearing officer did not err in determining that the claimant's date of injury was _____. The claimant asserted that he sustained a compensable repetitive trauma injury in the form of right CTS, on _____, the date he was first diagnosed with such disease. The carrier asserts, however, that the claimant's date of injury was on or about _____, the date the claimant first sought medical treatment for wrist pain.

Section 408.007 provides that 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. We have said that the date of injury is when the injured employee, as a reasonable person, could have been expected to understand the seriousness and work-related nature of the disease. Texas Workers' Compensation Commission Appeal No. 94534, decided June 13, 1994, citing 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 date of the first symptoms will not necessarily constitute the date of injury. Texas Workers' Compensation Commission Appeal No. 941505, decided December 22, 1994.

The medical evidence revealed that although the claimant was first treated for right wrist pain in October 1998, he was not diagnosed and treated for right CTS until. Under the circumstances, the hearing officer could find that the claimant knew or should have known that his CTS, a distinct injury from his tendinitis, was related to his employment on _____. The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Disability

The hearing officer did not err in determining that the claimant had disability from _____, through the date of the hearing. Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 000303, decided March 29, 2000. The hearing officer's determination is not so against the great weight and the preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Timely Notice/Filing Issues

As stated above, the self-insured requests that the Appeals Panel find that the claimant failed to notify the self-insured of the occupational disease within 30 days of _____; that the claimant failed to file a claim for compensation within one year of the date of injury; and that the self-insured is relieved of liability for the claimed injury. Because these matters were not properly before the hearing officer and in view of our affirmance of the hearing officer's date of injury determination, we decline to address the self-insured's request. See Section 410.151.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

DISSENTING OPINION:

I respectfully dissent for the reason that, in my opinion, the great weight of the evidence establishes that the claimant's date of injury is _____, the date he was diagnosed with tendinitis, which the doctor related to his employment. To fulfill the purpose of the notice of injury provision (Section 409.001), namely, to allow the insurer an opportunity to investigate the facts, the employer need only know the general nature of the injury and the fact that it is work related. DeAnda v. Home Insurance Company, 618 S.W.2d 529 (Tex. 1980); Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied). Further, the full extent of a work-related injury need not be reported in order to preserve entitlement to compensation. Texas Workers' Compensation Commission Appeal No. 951613, decided November 10, 1995. On _____, the claimant was diagnosed with a work-related injury to his right upper extremity, tendinitis, while carpal tunnel syndrome was then ruled out. However, workers' compensation case law on notice of injury does not permit the claimant to fail to timely notify the employer of his work-related injury, namely, a right upper extremity injury in the nature of tendinitis diagnosed on _____, and then avoid the consequences of failing to provide timely notice of such injury by later obtaining a different diagnosis of his right upper extremity condition, to wit carpal tunnel syndrome.

Philip F. O'Neill
Appeals Judge