

APPEAL NO. 011342  
FILED JULY 31, 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 25, 2001. With regard to the issues before him, the hearing officer determined that the respondent (claimant herein) sustained a compensable injury in the form of an occupational disease; that the date of injury was \_\_\_\_\_; that the appellant (carrier) was not relieved of liability as the claimant timely reported his injury by informing his supervisor of the same on December 1, 2000; and that the claimant had disability beginning on December 1, 2000, and continuing through May 15, 2001. The carrier appeals all of these determinations, requesting that we reverse them. The claimant responds that the decision of the hearing officer should be affirmed.

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 in mid-October 2000 he began working on a special project for his employer. The claimant also testified that this work required him to work long days and nights on the keyboard and at the computer to meet the project's \_\_\_\_\_, deadline. The claimant reported having problems with shoulder pain on October 31, 2000, but this was relieved by massage. Medical records show that on \_\_\_\_\_, while working to meet the project's midnight deadline, the claimant's right forearm locked up so that he could not manipulate the computer mouse and he had to complete the last hour of the work before the deadline using his left hand.

The claimant stated he was unable to go to work on December 1, 2000, but the claimant reported his injury to his supervisor in a telephone conversation on that day. During the course of the same conversation, the claimant's supervisor informed the claimant he was being laid off along with 100 employees.

The claimant offered medical evidence supporting his position that he had suffered a repetitive trauma injury related to work, and the carrier presented contrary medical evidence. The Texas Workers' Compensation Commission (Commission) selected Dr. W for a required medical examination. Dr. W related the claimant's condition to his work. On appeal the carrier attacks the validity of Dr. W's opinion as well as other medical evidence favorable to the claimant as being based upon history provided by the claimant.

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 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 date of the claimant's injury was \_\_\_\_\_, and that the claimant timely reported his injury on December 1, 2000. The carrier argues that the claimant should have known earlier than \_\_\_\_\_, that his injury was related to his employment. The carrier contends that the claimant should have realized that his problems were related to his job when he experienced pain on October 31, 2000. When the claimant first knew, as a reasonably prudent person, that his condition might be related to his 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 he had a work-related injury was \_\_\_\_\_, is sufficiently supported by the evidence.

There is conflicting evidence regarding disability. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. Here, there is support for the hearing officer's disability determination both in the claimant's testimony and in some of the medical evidence.

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge