

APPEAL NO. 011891
FILED SEPTEMBER 24, 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 July 17, 2001. The hearing officer resolved the disputed issues by determining that the respondent/cross-appellant (claimant) sustained a compensable injury in the form of a repetitive trauma injury, that the date of injury pursuant to Section 408.007, the date the employee knew or should have known the disease may be related to her employment, is _____; and that due to her compensable injury, the claimant has had disability beginning on November 30, 2000, and continuing through the date of the hearing. The appellant/cross-respondent (carrier) appealed the hearing officer's determinations as to injury and disability and the claimant responded, urging affirmance of those determinations. The claimant appealed the hearing officer's determination as to the date of injury and the carrier responded, urging affirmance of that determination.

DECISION

Affirmed in part, reversed and remanded in part.

INJURY AND DISABILITY

The hearing officer did not err in determining that the claimant sustained a compensable injury in the form of an occupational disease, (typing repetitive trauma) and that she has had disability as a result. The claimant testified as to the repetitive nature of her employment as an account service representative with the employer. It is undisputed that the claimant developed bilateral carpal tunnel syndrome (BCTS), and at least one doctor related her condition to her work activities. The claimant testified that the reason that she has been unable to return to work for the time periods in question, is her BCTS. The claimant's testimony and the medical evidence provide sufficient evidence to support the hearing officer's determinations as to the compensability of the claimant's injury and her disability.

DATE OF INJURY

The hearing officer erred in his determination that the date of injury pursuant to Section 408.007 is _____. The hearing officer indicates that he "deemed" this date, although the testimony he recites in support of the finding refers to "late" _____. The record is devoid of any evidence that the claimant knew or should have known that she suffered from BCTS or that it could be work-related on _____.

The claimant testified that she believed her hand pains related to a non-compensable neck injury from which she had surgery and was receiving physical therapy. A presurgical letter dated July 19, 2000, noted that the claimant had pain down her right

arm as well as neck pain and related both to a herniated cervical disc with radiculopathy.

The claimant testified that she did not actually know she had BCTS until November 30, 2000, when she was examined by Dr. A for a second opinion as to why she was still out of work, and he told her she had the condition that it was related to her typing activities at work. The claimant had been sent to Dr. A by her employer and had indicated in her initial questionnaire that her condition might be work-related. The claimant further testified that she immediately reported the injury to her supervisor that same day. (The hearing officer, in determining disability, found that it began November 30th, although the claimant was out of work also at the time she saw the physical therapist). When asked if anyone prior to this date had mentioned that she had BCTS, the claimant said it was in the "latter" part of _____ that a physical therapist, who was treating her for her neck, suggested that she "might" have BCTS. However, the claimant did not testify that this conversation also involved a discussion of whether her BCTS was work-related.

Even assuming that the hearing officer believed that the conversation with the physical therapist for a non work-related condition provided the requisite knowledge, we find no basis for concluding that the "latter" part of _____ may be deemed to be the middle of that month. The _____ date is thus against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Accordingly, we reverse and remand for further fact findings on a date of injury supported by the evidence. It is not necessary for the hearing officer to hold any additional proceedings, or take additional evidence, although we defer to the discretion of the hearing officer on this matter. We would further note that while date of injury does not necessarily equate to the date of diagnosis, neither does the first symptom compel a finding of the requisite knowledge that one knows, or even should know, that one has a condition which may be work-related. See Texas Workers' Compensation Commission Appeal No. 001550, decided August 18, 2000; Texas Workers' Compensation Commission Appeal No. 941505, decided December 22, 1994; Commercial Insurance Company of Newark, New Jersey v. Smith, 596 S.W.2d 661 (Tex. Civ. App.-Fort Worth 1980, writ ref'd n.r.e.). The fact that the claimant was being treated for another condition entirely when the suspected condition was first discussed is a factor that may be taken into account in evaluating the date of injury and whether the requisite knowledge of work-relatedness was present.

The hearing officer's determinations regarding injury and disability are affirmed. His date of injury determination is reversed and remanded for a determination consistent with this opinion. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001).

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL ST.
DALLAS, TEXAS 75201.**

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge