

APPEAL NO. 020096
FILED FEBRUARY 21, 2002

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 December 11, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease injury with a date of injury of _____, and did not have disability. On appeal, the claimant contends that these determinations are against the great weight of the evidence. The respondent (carrier) urges affirmance.

DECISION

Reversed and remanded.

The claimant contends that the hearing officer erred in finding that the claimant was diagnosed with bilateral carpal tunnel syndrome as early as _____, and that this finding resulted in the erroneous determination that the claimant did not sustain a compensable occupational disease injury with a date of injury of _____. Section 401.011(34) defines occupational disease as including repetitive trauma injuries. 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 hearing officer did not make a specific finding of fact regarding the date of injury, but instead found the following:

FINDING OF FACT

2. Claimant was diagnosed with cervical spondylosis, thoracic outlet syndrome and bilateral carpal tunnel syndrome [BCTS] as early as _____.

Notwithstanding the fact that there is no indication that the claimant was *diagnosed* with BCTS on this date, Finding of Fact No. 2 is an improper standard to determine the date of injury for an occupational disease. The date of injury for an occupational disease is not the date the claimant receives a definitive diagnosis or when the claimant discovers the seriousness of her injury, rather it is the date the claimant "knew or should have known that the injury may be related to the employment." Section 409.001(a)(2). On remand, the hearing officer should make a specific finding as to the date on which the claimant knew or should have known that her injury may have been related to her employment, irrespective of the date on which the condition was noted by the doctor. Additionally, the hearing officer should make specific findings as to whether the claimant's activities were sufficiently repetitive to cause the BCTS and whether the BCTS rendered the claimant unable to obtain or retain employment at her preinjury wage.

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, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

The true corporate name of the carrier is **LIBERTY MUTUAL FIRE INSURANCE** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 N. ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge