APPEAL NO. 022101
FILED OCTOBER 8, 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 (CCH) was scheduled for May 30, 2002, and held on July 16, 2002. The hearing officer determined that September 7, 2001, is the date of injury pursuant to Section 408.007 that the appellant (claimant) knew or should have known that the occupational disease may be related to her employment; and that the respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify the employer pursuant to Section 409.001. The claimant appealed on sufficiency of the evidence grounds. The carrier responded, urging affirmance.

DECISION

Reversed and rendered.

The claimant testified that she worked as an administrative assistant for the employer and that her work duties involved typing on a keyboard and using a computer. The claimant testified that she first noticed symptoms of numbness and tingling to her right hand while she was driving her car in June 2001. She stated that she sought medical treatment for her right hand from her treating doctor, Dr. B, on June 6, 2001. The claimant stated that she did not attribute her symptoms of numbness and tingling in her right hand to work since these symptoms occurred only while she was driving and not performing her work duties. The medical evidence dated June 6, 2001, reflects that Dr. B prescribed medication, "Vioxx 25 mg," and that he discussed "with her [the symptoms] may possibly be carpal tunnel but there was no definite evidence of that today." The claimant stated that in September 2001, she sought treatment with Dr. B for anxiety and that she additionally informed Dr. B that the Vioxx was helpful to her right hand problems. The medical evidence dated September 7, 2001, reflects that Dr. B noted that the "Vioxx [was] previously helpful for carpal tunnel ***like*** paraesthesias and pains" (emphasis added) and prescribed more medication. The claimant testified that she continued to be treated by Dr. B for her anxiety only. The medical evidence dated November 8, 2001, reflects that Dr. B prescribed medication for the claimant's anxiety. The claimant testified that during December 2001, her symptoms of tingling and numbness had worsened to her right hand. She stated that Dr. B referred her to Dr. M to treat her hand symptoms. The medical evidence dated _____, reflects that Dr. M stated that the claimant "appeared" to have right carpal tunnel syndrome (CTS). The claimant testified that due to her conversation with Dr. M on _____, she realized on that date that her CTS was related to her employment. In a recorded statement, dated February 15, 2002, the claimant stated that she first started having problems with her right hand a month ago causing her hand to become more numb mainly when she did computer work and that she first noticed her the problems to her right hand "probably 6 months" ago. The claimant contended at the CCH that her problems with her right hand began in June 2001, while performing a nonwork-related

activity, driving, and that she did not attribute her hand symptoms to her employment until _____.

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. The claimant's testimony and medical evidence do not support the hearing officer's determination that on September 7, 2001, the claimant knew or should have known that the symptoms of tingling and numbness in her hand, which occurred both during and away from work, might be related to her employment. The medical records dated September 7, 2001, reflect that the claimant had "carpal tunnel like" symptoms, and that she requested additional medication for her symptoms as she was simultaneously treated for her anxiety disorder. The Appeals Panel has repeatedly cautioned that the date of injury for an occupational disease is not necessarily the date of the first symptom. Texas Workers' Compensation Commission Appeal No. 950028, decided February 16, 1995; Texas Workers' Compensation Commission Appeal No. 990089, decided March 1, 1999 (Unpublished). We have also declined to attribute medical knowledge to lay persons whose own treating physicians are in doubt about the nature of an injury or its causation. Texas Workers' Compensation Commission Appeal No. 941583, decided January 9, 1995; Bocanegra v. Aetna Life Insurance Company, 605 S.W.2d 848 (Tex. 1980). Consequently, decisions finding a date of injury to be the same as the date of the first symptom have frequently been found to be against the great weight and preponderance of the evidence, and manifestly unjust. *See*, for example, Appeal No. 990089, supra; Texas Workers' Compensation Commission Appeal No. 982944, decided January 21, 1999; Texas Workers' Compensation Commission Appeal No. 992486, decided December 29, 1999; and Texas Workers' Compensation Commission Appeal No. 941505, decided December 22, 1994. It is reasonable prudence, not extraordinary prudence, that is the standard for determining when a person who did not actually know of a diagnosis should nevertheless have understood that there may be a work-related injury. There is legally insufficient evidence to support a September 7, 2001, date of injury, and the hearing officer's Finding of Fact No. 5 and Conclusion of Law No. 3 are against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The claimant identified _____, the date she saw Dr. M, as the date she knew or should have known that her occupational disease was related to her employment. There is no other date of injury supported by the evidence.

We reverse the hearing officer's determination that on September 7, 2001, the claimant knew or should have known the occupational disease may be related to her employment, and render a new decision that on _____, the claimant knew or should have known the occupational disease may be related to her employment.

Section 409.001(a)(2) requires that the employee give notice to a supervisor of an occupational disease within 30 days of the date he or she knew, or should have known, that the injury may be related to employment. The Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) in evidence reflects that the carrier first received written notice of injury on February 8, 2002. Accordingly, we reverse the

hearing officer's determination that the claimant did not give timely notice of her injury and render a new decision that timely notice was given within 30 days of _____.

The true corporate name of the insurance carrier is **COMBINED SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

_____
Veronica Lopez
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge