APPEAL NO. 030732
FILED MAY 14, 2003

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 March 3, 2003. The hearing officer determined that the appellant/cross-respondent (claimant) had not sustained a compensable injury in the form of an occupational disease; that the date of injury (DOI) is _____; that the claimant did not have disability; and that the respondent/cross-appellant (carrier) is not relieved of liability pursuant to Section 409.002 because claimant timely notified his employer of his claimed injury. The claimant appeals the injury and disability issues asserting that he did not know that he needed to prove the repetitive trauma of his injury and that he had disability. The carrier appealed the DOI and timely notice issues. Neither party filed responses to the other's appeal.

DECISION

Affirmed.

The claimant, an automotive technician, claims a repetitive trauma occupational disease injury (*see* Sections 401.011(34) and 401.011(36) for definitions of occupational disease and repetitive trauma) in the form of left carpal tunnel syndrome (CTS) performing car repairs and changing tires. The hearing officer commented that the claimant "claimed he changed a lot of tires but there was scant testimony as to how many or how often during the course of a normal day or throughout his employment." The claimant, in his appeal, seeks to provide some of this information stating he did not know he needed to discuss that factor. We do not normally consider information submitted for the first time on appeal particularly when it is in the nature of testimony which should have been presented at the CCH. The hearing officer's determination on this issue is supported by the evidence and is not against the great weight of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Regarding the DOI, there was conflicting evidence presented. Clearly the claimant had symptoms of left-handed pain as early as April 2002. The case is somewhat complicated in that the claimant had left knee surgery in May 2002, as a result of another work injury, and was also receiving treatment for his left hand at that time. On _____ (the date the carrier maintains is the DOI), a hand specialist diagnosed the claimant with mild CTS. Various other tests were performed and on _____, an MRI was performed and a doctor diagnosed "severe left [CTS]" with possible avascular neurosis. Section 408.007 defines the DOI for an occupational disease as the date on which the employee "knew or should have known that the disease may be related to the employment." While clearly an earlier DOI could be supported by the evidence and the claimant's testimony, 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.*

The carrier's challenge on timely notice to the employer of the claimed injury is predicated on an earlier DOI. In that we are affirming the _____, DOI, the claimant's notice to the employer, found by the hearing officer to be July 27, 2002, was timely and is affirmable.

Because we are affirming the hearing officer's determination that the claimant did not sustain a compensable injury, the claimant cannot by definition in Section 401.011(16), have disability.

Accordingly, the hearing officer's decision and order are affirmed.

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

PRENTICE-HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge