APPEAL NO. 030821
FILED MAY 15, 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 was held on March 26, 2003. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable injury to her wrists in the form of an occupational disease, with a date of injury of _____. The appellant/cross-respondent (self-insured) appeals this decision. The claimant responds, urging affirmance of the compensability determination and, additionally, disputing the date-of-injury portion of the compensability determination.

DECISION

Affirmed.

The issue presented to the hearing officer for resolution was whether the claimant sustained a compensable occupational disease injury with a date of injury of (alleged date of injury). The self-insured argues on appeal that in finding a date of injury other than (alleged date of injury), the hearing officer "improperly considered issues not raised at the [benefit review conference] without notice to the parties and to the detriment of the self-insured." The Appeals Panel has noted that dispute resolution proceedings are not governed by formal rules of pleading and a hearing officer may find from the evidence a date of injury different from that asserted by the claimant, particularly in cases asserting an occupational disease, where the date of injury can be somewhat fluid. Texas Workers' Compensation Commission Appeal No. 950061, decided February 24, 1995. Accordingly, the hearing officer did not err in determining that, based on the evidence presented, the date of injury was a date other than (alleged date of injury).

The self-insured also alleges that since the hearing officer found a date of injury prior to (alleged date of injury), he was obligated to consider the issue of whether the claimant gave timely notice of the injury to her employer. We disagree. In Texas Workers' Compensation Commission Appeal No. 94713, decided July 12, 1994, the Appeals Panel stated the following:

> Where timeliness of notice, a defensive issue as we noted in Texas Workers' Compensation Commission Appeal No. 93178, decided April 26, 1993, is waived or not an issue, the fact that a claimant is determined to have known or should have known of the job relatedness of the repetitive trauma injury outside the 30-day notice period would not, in and of itself, defeat an entitlement to benefits. This is the case where, as here, there was no timely notice issue or it was waived under such circumstances. The purpose of the notice requirements do not come into play and are not thwarted. *See* Texas Workers' Compensation Commission Appeal No.

92199, decided June 26, 1992, and Texas Workers' Compensation Commission Appeal No. 93183, decided April 22, 1993.

And see Texas Workers' Compensation Commission Appeal No. 94709, decided July 15, 1994. Because the self-insured did not raise the issue of timely notice, the hearing officer was not obligated to raise the issue.

Section 401.011(34) defines occupational disease as including repetitive trauma injuries. The date of injury for an occupational disease is the date the employee knew or should have known that the disease may be related to the employment. Section 408.007. The date of injury, when the claimant knew or should have known that the bilateral carpal tunnel syndrome (BCTS) may be related to the employment, is generally a question of fact for the hearing officer to resolve. Similarly, whether the claimant's activities were sufficiently repetitive to cause the claimant's BCTS was a factual question for the hearing officer. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Contrary to the self-insured's argument on appeal, expert medical evidence is not necessary to establish a causal connection between a claimant's work and BCTS. Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992 (citing Houston Independent School District v. Harrison, 774 S.W.2d 298 (Tex. App.-Houston [1st Dist.] 1987, no writ); *see also*, Texas Workers' Compensation Commission Appeal No. 951917, decided December 28, 1995. Nothing in our review of the record indicates that the hearing officer's decision is 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).

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

JK
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Margaret L. Turner
Appeals Judge