APPEAL NO. 031028
FILED JUNE 12, 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 April 10, 2003. The hearing officer determined that the appellant/cross-respondent (claimant) had not sustained a compensable repetitive trauma injury; that the claimant did not have disability resulting from the claimed injury; that the claimant had timely notified the employer of the claimed injury; that the date of injury (DOI) was _____; and that the claimant is not entitled to change treating doctors to Dr. V.

The claimant appealed the injury and disability determinations on a sufficiency of the evidence basis and the change of treating doctor issue on the basis that the initial treating doctor was treating the claimant under a group health policy and she "reasonably assumed" that doctor would not treat her under workers' compensation. The respondent/cross-appellant (carrier) responded, urging affirmance on the appealed issues and in a timely appeal, asserted that there should be "an earlier [DOI]" and that the claimant's notice was therefore untimely. The claimant did not respond to the carrier's appeal.

DECISION

Affirmed.

The claimant, a computer technician, alleges a repetitive trauma injury (bilateral carpal tunnel syndrome (CTS)) due to "prolonged lifting of . . . totes" containing laptop computers. While it is clear the claimant began having symptoms of CTS and was even told she had CTS as early as February 9, 2002, she maintained, and the hearing officer accepted, that she did not associate the CTS with her work until _____, when she was advised by her group health carrier that her injury may be work related. The claimant reported her injury on March 28, 2002. The claimant's employment was subsequently terminated on April 6, 2002, for other reasons.

The claimant's family doctor, Dr. D, treated the claimant under the claimant's group health coverage and documented symptoms of CTS on February 9 and February 18, 2002. On about _____, the claimant's group health carrier notified the claimant that the CTS "occurred at work" and suggested she submit a claim to the workers' compensation carrier. The claimant subsequently saw Dr. D at least one more time on March 30, 2002, for her CTS. After the claimant's employment was terminated on April 6, 2002, the claimant sought to change treating doctors to Dr. V, a chiropractor, on April 23, 2002, approved by the Texas Workers' Compensation Commission on May 2, 2002. The hearing officer commented that the claimant had seen Dr. D after she became aware that the injury was being processed as a workers' compensation claim

and "did not check to determine whether [Dr. D] was willing to continue providing her medical care." The hearing officer concluded:

> Having sought medical care for her claimed injury from [Dr. D] on March 30, 2002, she selected him as her treating doctor and [there] is no sufficient basis to approve the request to change to [Dr. V].

The claimant testified, and demonstrated, her duties at the CCH. The hearing officer concluded there was "insufficient evidence that her work related activities were a cause of her complained of conditions." Without a compensable injury, the claimant cannot by definition in Section 401.011(16) have disability. Section 408.007 defines the DOI for an occupational disease (which includes a repetitive trauma) as being the date on which the employee knew or should have known the disease may be related to the employment. The hearing officer determined that date to be the date the claimant was informed by her group health carrier that her injury might be related to her work.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are not 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).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **GREAT AMERICAN INSURANCE COMPANY OF NEW YORK** and the name and address of its registered agent for service of process is

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

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Margaret L. Turner
Appeals Judge