APPEAL NO. 972552

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 November 7, 1997, in (city), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were whether the respondent (claimant) sustained a compensable carpal tunnel syndrome (CTS) injury on (date of injury), whether respondent Liberty Mutual (Carrier 2) was relieved of liability because of untimely notice of injury, whether the claimant had disability resulting from the injury sustained on (date of injury), whether a prior injury of (prior date of injury), was the sole cause of the claimant's current condition, and whether the subsequent injury of (date of injury), was the sole cause of the claimant's current condition. The hearing officer determined that the claimant did not sustain a CTS injury on (date of injury), but she sustained a CTS injury on (date), the date she knew or should have known that she had a new CTS injury and that it was work related. The hearing officer also determined that the appellant (Carrier 1) was relieved of liability for the (date), CTS injury because of claimant's untimely notice of injury; that Carrier 2 did not have workers' compensation coverage on the employer until February 1, 1995; that the claimant's current condition was not solely the result of either the (date) injury or the subsequent (date) injury; and that the claimant did not have disability because she did not sustain a compensable injury (timely notice not having been given). The only appeal in this case comes from Carrier 1, who appeals several findings of fact and conclusions of law urging that they are central to the decision and order of the hearing officer which finds a date "of accident (date), with the determination that this was the date that the claimant knew or should have known that her repetitive trauma had caused a new injury." The basis for the appeal is stated: "[t]he Hearing Officer exceeded her authority and was without jurisdiction to consider an issue which had not been discussed at the Benefit Review Conference nor added by agreement of the parties at the Contested Case Hearing, nor added as an issue ex parte by the Hearing Officer." As indicated, no other appeals or any responses have been filed.

DECISION

Affirmed.

This hearing was consolidated with the express agreement of the parties and involved two carriers and two claims. Since we will only address the matter appealed, namely, that the hearing officer "exceeded her authority and was without jurisdiction to consider an issue . . . ," the recitation of the evidence and facts will be limited. Succinctly, the claimant worked processing chicken parts for the employer during the pertinent times involved in the case. She sustained a CTS injury in (date), had surgeries in 1993 and 1994, received benefits from Carrier 1, returned to work, reached maximum medical improvement and was assessed an 11% impairment rating. After her return to work she again had problems with her wrists, additional diagnostic tests were performed, and

medical records indicate recurrent and diagnosed CTS in early 1995, and her doctor's records, one on (date), indicated discussions of possible surgery. (Other subsequent medical records note continuing wrist problems in 1995, 1996, and early 1997.) The claimant did not notify anyone of a new injury, but a letter of April 5, 1995, indicated that, at least as of that date, the employer was aware of the diagnosis. The claimant also had a cervical injury in 1995 that resulted in her being off work until October 1996. The claimant testified that some three weeks before (date of injury), she began performing "clipping" duties which require much repetitive hand pressure and that her wrists pained her, she went to the nurse and subsequently to the doctor where a new CTS was diagnosed. She was told of the new diagnosis on (date of injury), and reported the matter the same day.

While a date of injury was not a specific issue stated at the beginning of the CCH, during the CCH Carrier 2 introduced and emphasized the medical records showing CTS well before the claimed new date of (date of injury), cross-examined the claimant about the records and her CTS problems over the years, and, in closing statements, urged that the medical records and diagnostic tests showed recurrent CTS in 1995 that the claimant knew but did not report. However, aside from the evidence and positions advanced by a party raising a question as to date of injury, where the claimed injury is an occupational disease and there is an issue of timely notice as in the situation here, it was essential for a resolution of the issues that a date of injury be determined. Given that the date of injury for occupational diseases , that is the date a claimant knew or should have known that the disease may be related to the employment (Section 408.007), is frequently difficult to ascertain under factual situations as that present here, it is nonetheless essential that a date of injury be determined by the hearing officer. As we noted in Texas Workers' Compensation Commission Appeal No. 941505, decided December 22, 1994, although the specific issue had not be stated in the CCH: "[w]e have repeatedly stated, most especially when timely notice is in issue, that it is essential for the hearing officer to find a date of injury as defined in the act for the type of injury." And in Texas Workers' Compensation Commission Appeal No. 960238, decided March 21, 1996, we stated that "since one of the issues at the CCH was whether claimant gave timely notice to his employer, it was incumbent upon the Hearing Officer to establish the date of injury." And, there cannot be two dates of injury. Texas Workers' Compensation Commission Appeal No. 972387, decided January 5, 1998. As early as Texas Workers' Compensation Commission Appeal No. 92589, decided December 14, 1992, we stated that a date of injury must be determined in resolving a notice issue.

Although it is certainly better procedure to have, to the extent possible, each issue being disputed clearly stated, where there are factual issues subsumed under a general issue or where there are essential findings necessary for the specified issues, such as is the case in disputed occupational disease instances and notice issues, the hearing officer has the authority and jurisdiction to make findings and arrive at conclusions. We find no merit to the exceed authority and lack of jurisdiction points raised on appeal. Accordingly, we affirm the decision and order of the hearing officer.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge