

APPEAL NO. 980085

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 December 18, 1997. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on _____, and whether claimant gave timely notice of injury or had good cause for any failure to do so. The hearing officer determined that the claimant sustained a compensable injury on or about _____, that she timely reported the injury, and, that even if she did not timely report her injury there was good cause for failing to do so. The appellant (carrier) appeals the hearing officer's findings that claimant sustained a compensable injury, gave timely notice, and had good cause if she did not timely notify the employer, urging that there was no evidence to support the findings or alternatively, that they were against the great weight and preponderance of the evidence.

DECISION

Affirmed as modified.

The claimant testified that she had periodically experienced pain in her wrist, that she occasionally wore a brace or bandage, that her job involved data entry, and that the data entry requirements increased during August 1997. She stated that the wrist pain increased in September and she began to experience grip strength problems and numbing and tingling in her fingers. Toward the end of August, she stated that she began to realize that the work was causing her wrist problems. On September 19, 1997, she went to a doctor recommended by her family physician, a (Dr. E), who gave her a cortisone shot, pain medication, and took her off work for three days. Dr. E told claimant that the her symptoms were likely related to her employment duties. Dr. E indicates in a report dated December 3, 1997, his impression of "possible nerve entrapment vs. neuropathy," that EMG testing had been denied, and that in "all reasonable medical probability, the injury was due to repetitive motion and trauma, which I feel to be occupational related due to the type of duties patient described she had performed over a long period of time."

The claimant testified that after she returned to work on September 25, 1997, she advised two supervisors of the injury and that it was work related. One of the supervisors called as a witness denied that the claimant indicated her wrist problems were work related on September 25, 1997; however, an earlier statement from this supervisor reflected that when the claimant returned to work and he was inquiring about what happened to her wrist, she "may have said at that time, no, it's this terminal or something." This supervisor also stated that it was after the claimant was terminated for underproduction on or about October 2, 1997, that it was brought to his attention that the claimant was alleging a workers' compensation injury. An interview statement from the other supervisor indicated that the claimant did perform data entry functions as a part of her job, but that the claimant never gave her any notice that she had a work-related injury. Records reflect that the field

office of the Texas Workers' Compensation Commission on October 2, 1997, was notified that the claimant was filing a claim. The claimant listed her date of injury as _____.

The hearing officer found and concluded that the claimant sustained a compensable injury on or about _____. The hearing officer indicates in her Decision and Order that she believed the claimant to be a credible witness. Weight and credibility to be given the evidence is a matter for the hearing officer's determination. Section 410.165(a). The claimant's testimony and documents concerning the filing of a claim, together with the reports from Dr. E provide a sufficient evidentiary basis for the determination that the claimant sustained a compensable injury on or about _____. The hearing officer rejected the argument advanced by the carrier that this was a "spite" claim arising from the October 2, 1997, termination, noting that some of the medical records showing the injury were generated before the termination. Both the claimant and Dr. E related the wrist injury to the work.

Regarding the timely notice issue, there is conflict and inconsistency between the hearing officer's discussion section and her findings. In her discussion she emphasizes, and appears to believe, the claimant's testimony that she first realized her injury might be related to her employment during the last week of August (on or after August 26, 1997), and therefore, "it is likely that her September 25, 1995, injury report was timely." The hearing officer goes on to discuss that "since the record contains evidence to support an argument that claimant's injury may have occurred as early as _____, more than thirty days before September 25, 1997, the matter of claimant's possible good cause for failing to make a timely injury report must be discussed." As indicated above, the hearing officer found as fact that the injury date was on or about _____. She also found and concluded that the claimant timely reported the injury. We do not find evidence in the record to support this finding that the claimant timely reported the injury. To the contrary, given the date of injury as determined by the hearing officer to be on or about _____ (and not the end of August as testified to by the claimant), and the only evidence of notice being the September 25, 1997, discussion between the claimant and her supervisor(s) as obviously believed and discussed by the hearing officer, the notice could not have been within the required 30 days from the date of injury. Section 409.001. Therefore, we set aside the finding and conclusion that the claimant timely reported her compensable injury.

The hearing officer went on to find as a part of the second issue before her that "in the event that the claimant did not timely report her compensable injury which occurred on or about _____, she had good cause for failing to do so." The claimant's testimony as well as other evidence in the record indicated that the claimant had experienced wrist pain periodically over some period of time, that she apparently self-treated it with a brace or bandage, that she did not believe it to be serious until she started having increased pain, numbness, tingling and loss of grip strength and made an appointment with Dr. E, whom she saw on September 19th. She testified that Dr. E told her he thought it was related to her work, that he gave her an injection, other medication and took her off work for three days. When she returned to work she notified her supervisors that her wrist problems or

injury were related to her work. The hearing officer determined that good cause was shown. While different inferences could be found from the evidence, we are unwilling to conclude that there is insufficient evidence to support the hearing officer's finding of good cause under the circumstance. Whether or not good cause is shown is a question of fact for the hearing officer, and is based upon a reasonably prudent person standard. Hawkins v. Safety Casualty Company, 207 S.W.2d 370 (Tex. 1948). We conclude there is sufficient evidence to support the determination of good cause. Texas Workers' Compensation Commission Appeal No. 91030, decided October 30, 1991. *Compare* Texas Workers' Compensation Commission Appeal No. 93757, decided October 7, 1993.

With the exception of the finding regarding timely notice which we set aside as not supported by the evidence, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge