

APPEAL NO. 980165  
FILED MARCH 10, 1998

On December 17, 1997, a contested case hearing (CCH) was held, with the hearing officer. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the CCH were: (1) whether the (respondent) claimant sustained a compensable injury in the form of an occupational disease; (2) whether the claimant has had disability from \_\_\_\_\_, to the present resulting from the compensable injury; (3) the date of injury pursuant to Section 408.007; and (4) whether the appellant (carrier) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify her employer of her injury. The carrier requests review and reversal of the hearing officer's decision that: (1) the claimant sustained an injury in the form of an occupational disease; (2) the claimant has had disability from \_\_\_\_\_, through the date of the CCH; (3) the date of injury was \_\_\_\_\_; and (4) the carrier is not relieved of liability under Section 409.002. The claimant requests affirmance.

DECISION

Affirmed.

The claimant, who is 60 years of age, testified that she was diagnosed as having osteoporosis in 1990; that she has worked for the employer for about 11 years, the last nine years as a senior teller; that her regular work hours prior to \_\_\_\_\_, were from 9:00 a.m. to 5:30 p.m.; that except for her lunch break she spent all of her day in front of a computer; that she first noticed that she had pain in her neck, shoulders, and right hand in (month A) 1997; that she began seeing (Dr. P) in (month A) 1997; that Dr. P did not link her problems to her work duties; that she did notice as early as March 1997 that her symptoms increased during her work week and decreased on weekends; that during the middle of 1997 her neck became more stiff and painful; that prior to (month B) 1997 she did not suspect that the pain in her neck, shoulders, and right hand was related to her work, but thought that her hand pain might be due to writing at work; that in the latter part of (month) she did complain about discomfort in her neck, shoulders, and right hand; that prior to \_\_\_\_\_, she did not tell anyone that her neck, shoulder, and right hand problems were caused by her work; that her supervisor, (EC), was aware that she was going to a doctor; and that she did not have conversations with EC or EC's supervisor, (MC), about workers' compensation coverage prior to \_\_\_\_\_.

The claimant also testified that while it would not be unreasonable for a person to make a connection between her work and her problems with her neck, shoulders, and right hand, she did not make that connection until the latter part of \_\_\_\_\_; that by \_\_\_\_\_, her leave time for doctor appointments was used up due to doctor appointments and attending funerals; that on \_\_\_\_\_, she told MC that she could not take the pain anymore and needed to see a doctor as soon as possible; that on \_\_\_\_\_, she saw (Dr. A),

who practices with Dr. P, because Dr. P was on medical leave; that on \_\_\_\_\_, Dr. A told her that her problems were work related; that no doctor prior to \_\_\_\_\_, had told her that her problems were work related; that on \_\_\_\_\_, she told MC what Dr. A had told her about her problems being work related; that on \_\_\_\_\_, Dr. A restricted her to four hours of work per day and prescribed physical therapy for the rest of the day; that she worked four hours per day for the employer until October 8, 1997, at which time she completely stopped working because of an inflamed esophagus that was unrelated to her claimed work-related injury and for which she has been treated by (Dr. S) and (Dr. K); that at the time she went completely off work neither Dr. A nor Dr. P had returned her to full duty; and that either prior to \_\_\_\_\_ or a few days before \_\_\_\_\_, she did not want to file a "claim" when EC asked her about filing a "claim" because she did not know she would become so "incapacitated."

EC, the claimant's immediate supervisor, confirmed that the claimant did "a lot of stuff on the computer" and that the claimant's computer work as a senior teller involved data entry, but she said that the claimant also did "miscellaneous" things, which would take her away from her work station and that the claimant did not use her computer the entire workday. EC gave conflicting testimony concerning when the claimant told her of neck, shoulder, and hand problems. She first said that she did not recall when the claimant told her of those problems; she then said that it was probably in the summer; she next said that the claimant complained of physical problems pretty much throughout the year; she then returned to her testimony that the claimant's complaints were made during the summer, especially following heavy work days; and she finally said that the claimant's complaints began in (month A) and continued through \_\_\_\_\_.

EC also gave conflicting testimony concerning whether and when she had spoken to the claimant about filing a workers' compensation claim prior to \_\_\_\_\_. She first said that at some unspecified time prior to the time an "accident report" was filed, she had spoken to the claimant about a filing a workers' compensation claim; she then said that that conversation took place sometime in the summer, around June or July; she next said that that conversation took place in \_\_\_\_\_; she then said that she never said anything like "workmen's comp," but that she just asked if she needed to "file a claim" on the claimant; and she finally said that she first discussed with the claimant filing a "claim" in (month A). Although not stated in the questions or answers, it is apparent that EC was testifying about events in 1997. EC said that the claimant told her during the conversation or conversations about filing a "claim," whenever they occurred, that she thought "it" was "from computer use" and that she did not want to file a "claim," but did want to see a doctor. Finally, EC testified that her discussions with the claimant regarding the cause of her problems being computer use and the filing of a "workers' comp" claim, began in (month A).

On February 26, 1997, Dr. P diagnosed the claimant as having "right hand and wrist inflammation - sprain and strain with tendinitis," with a "secondary diagnosis" of osteoporosis, and wrote that the claimant's symptoms are made worse with repetitive activities. On March 19, 1997, Dr. P added to the claimant's previous diagnosis of February 26th a diagnosis of "CS sprain and strain with degenerative changes" and noted that x-rays of the

claimant's right hand and wrist showed juxta-articular demineralization and that x-rays of the claimant's cervical spine showed mild demineralization and degenerative changes. Dr. P also saw the claimant on April 30, 1997, for continued complaints of right hand pain and on June 12, 1997, for a chief complaint of neck pain. Dr. A saw the claimant on July 29, 1997, and he gave the same diagnoses as had Dr. P and wrote that the claimant informed him that she sat at a computer practically all day. Dr. A recommended on July 29, 1997, that the claimant take 15-minute breaks at work every one to two hours and noted that the claimant's computer work required repetitious movements. Dr. A saw the claimant on \_\_\_\_\_, and he recommended at that time that the claimant work only four hours a day. Most of the reports of Drs. P and A reflect a "date of injury" of (date). In a note dated \_\_\_\_\_, Dr. A diagnosed the claimant as having "cervical spine sprain/strain and bilateral shoulder sprain/strain" and wrote that those diagnoses "are related to her [claimant's] work duties and therefore, work related."

Dr. S wrote on August 13, 1997, that the claimant underwent bone densitometry scans of the spine and left hip which were abnormal and showed the presence of osteoporosis of the spine and left hip. On October 23, 1997, Dr. A wrote that the claimant should continue on a work schedule of only four hours a day for four more weeks and that in his opinion the claimant's "problems" are related to her job duties. On November 25, 1997, Dr. A wrote that he was recommending that the claimant work only six hours a day for six weeks and that it was still his opinion that the claimant's "medical problems," which he diagnosed as a cervical sprain/strain and bilateral shoulder sprain/strain, are related to her job duties. On October 2, 1997, an unnamed "peer reviewer" for the carrier wrote that he or she had reviewed the claimant's medical records and that it was his or her opinion that the claimant's condition is not related to her job and that the claimant has had a natural progression of degenerative joint disease in her wrist and cervical spine.

The claimant had the burden to prove that she sustained a compensable injury. The testimony of the claimant and EC together with Dr. A's reports and opinion provide sufficient evidence to support the hearing officer's decision that the claimant sustained a compensable occupational disease. We have held that a claimant need not prove that the compensable injury is the sole cause of disability, but that it is a cause of disability. Texas Workers' Compensation Commission Appeal No. 961059, decided July 10, 1996. The hearing officer could consider Dr. A's recommendations of reduced work hours which continued even after the claimant was off work due to an inflamed esophagus in determining whether the claimant had disability as defined by Section 401.011(16). The claimant's testimony and Dr. A's reports provide sufficient evidence to support the hearing officer's decision that the claimant had disability from \_\_\_\_\_, to the date of the CCH. The date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. Section 408.007. Although there is conflicting evidence on the date of injury, the claimant's testimony, which the hearing officer was free to believe and any inconsistencies in which the hearing officer could resolve in the claimant's favor, provides sufficient evidence to support the hearing officer's decision that the date of injury was \_\_\_\_\_. It is undisputed that the claimant gave notice of injury to her employer on \_\_\_\_\_; thus, as found by the hearing officer,

with a date of injury of \_\_\_\_\_, the claimant's report of injury to her employer was timely under Section 409.001(a). Accordingly, as decided by the hearing officer, the carrier is not relieved of liability under Section 409.002.

The hearing officer's decision and order are affirmed.

Robert W. Potts  
Appeals Judge

CONCUR:

Susan M. Kelley  
Appeals Judge

Judy L. Stephens  
Appeals Judge