

APPEAL NO. 001679

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 July 6, 2000. The hearing officer determined that the respondent (claimant) did not sustain a compensable injury on _____, and that the claimant did sustain a compensable injury on June 15, 1999. The appellant (carrier) appeals both the date of injury found by the hearing officer and the fact of injury. The carrier asserts that the claimant had not proven that her injury was related to or arose from her employment. There is no response from the claimant.

DECISION

We affirm in part, reverse and render in part.

The claimant was employed as a payroll processor for (employer), a property management company, which involved processing new hires, terminations, and payroll for all of the employer's locations. She was being trained in handling workers' compensation claims. She said that this involved data entry about three weeks out of a month, using a mouse. The claimant said she worked eight to ten hours a day. She is left-hand dominant, although she said she used the mouse with her right hand. The claimant also testified to a great variety of activities for which she used her hands that did not involve a mouse. Her supervisor, Ms. B, said that the claimant did payroll essentially two days out of the working month, and that there was considerable flexibility in that she would not be tied to her desk for the entire time. Ms. B in general offered testimony that the claimant's duties were less strenuous or repetitive than the claimant stated.

The claimant said she was being treated for diabetes. Her hand was sore, and she assumed this was due to her car (purchased in March 1998) which had a "stick-shift" standard transmission. She went to Dr. F on _____, when she could not get her right hand completely open without using her left hand. In her direct testimony, and at the beginning of cross-examination, she said that Dr. F told her she had trigger finger due to work-related injuries. When she proposed that it could be her car, he invited her to check it out although he had never heard of a car causing trigger finger, and she said that she would prefer to check the car rather than file a workers' compensation claim. She said that this conversation with Dr. F took place in May 1999. She said that she had her car checked out (it was not clear by whom) and that there were no problems with it.

Later in cross-examination, she agreed that she had not said anything about her job when she first saw Dr. F, but attributed her pain to her car. She agreed that on June 24, 1999, she sent Dr. F a letter advising that her hand hurt because of the stick shift because "I really felt like it was." Dr. F wrote that he first saw the claimant on June 15, 1999. He also stated that he had never seen trigger finger caused by a gear shift on a car, although his notes of June 15 are somewhat to the contrary.

The claimant's overriding symptom was that her hand "locked up." Since September 8, 1999, her treating doctor was Dr. O, who opined that the claimant might need surgery for what he deemed was a work-related injury. The claimant said she was not sure why Dr. O would indicate that she had hand problems for a year. The claimant said that she indicated she had stiffness, not locking up, for that time. She said she took Advil for her hand, and had changed her job somewhat to alleviate her hand problem. The claimant said that her injection treatments had been successful to alleviate the condition. Dr. O has written letters attributing the claimant's hand problems to repetitive motion at her workplace.

The claimant filed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) contending that she hurt her hand at 4:00 p.m. on _____. She stated that this was the day her thumb and middle finger "locked up" so that she could not open her hand. The claimant denied that she had problems earlier than this, although she agreed that she mentioned stiffness in her hands when she had earlier seen the doctor about her blood sugar.

There are doctors' reports from the fall and December 1999 indicating that the claimant had her problem for the past year. The claimant denied that this was so.

First of all, the date of injury was not in dispute nor could it be fairly said to be actually litigated. The claimant's nearly unvarying testimony was that her date of injury, the date she first knew, or should have known, that her injury may be related to her employment was _____. That is also the date for which pertinent stipulations were made regarding venue and coverage. In final argument, the carrier questioned the May 27 date only insofar as it related to the claimant's attribution of her car stick shift as the source of her problems. The hearing officer must adjudicate the issue brought forward by the parties, and is not free to add new issues *sua sponte*. We accordingly reverse the finding that the date of injury was June 15, 1999, and render a decision that it was _____.

Second, although this is clearly a case where different inferences could be drawn from the facts, and the explanation of the stick shift as the cause of the claimant's right hand problems is certainly plausible, we will affirm the hearing officer's determination that the claimant sustained an injury under our standard of review, which is to set aside the hearing officer's decision only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182

(Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We therefore affirm the decision that the claimant sustained a compensable hand injury.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge