APPEAL NO. 021632
FILED JULY 25, 2002

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 May 29, 2002. The issues were:

1. Did the [appellant] Claimant sustain a compensable injury in the form of an occupational disease, bilateral carpal tunnel syndrome [CTS]?

2. What is the date of injury?

3. Is the [respondent] Carrier relieved from liability under Texas Labor Code Section 409.002 because of the Claimant's failure to timely notify the Employer pursuant to Section 409.001?

4. Did the Claimant have disability resulting from a compensable injury, and if so for what period?

The hearing officer determined (1) that the claimant had sustained a repetitive trauma injury but that she had not sustained a compensable injury "because she failed to prove the date of injury"; (2) that the claimant "failed to prove a probable date of injury"; (3) that "[b]ecause there there is no date of injury, there can be no showing whether notice of injury was timely given"; and (4) because the claimant did not have a compensable injury, the claimant did not have disability.

The claimant appeals, contending that the compensable injury includes bilateral CTS, that the date of injury was _____ (all dates are 2001 unless otherwise noted), that the claimant gave timely notice to the employer, and that the claimant had disability from _____ through October 6. The carrier responds, urging affirmance.

DECISION

Affirmed in part; reversed and remanded in part.

The claimant was employed as an "intake specialist" taking telephone calls and inputting data into a computer. How many calls a day the claimant received or fielded and how many key strokes were involved per call is disputed. The hearing officer found a repetitive trauma injury ("sprain/strain type injuries or tendonitis") that did not extend to or include CTS in either upper extremity. That determination is supported by the evidence and we affirm that portion of the hearing officer decision.

Section 408.007 provides that the date of injury for an occupational disease (to include a repetitive trauma injury) is the date on which the employee knew or should have known that the disease may be related to the employment. The Appeals Panel

has said that the date of injury is when the injured employee, as a reasonable person, could have been expected to understand the seriousness and work-related nature of the disease. Texas Workers' Compensation Commission Appeal No. 94534, decided June 13, 1994, citing Commercial Insurance Co. of Newark, N. J. v Smith 596 S.W.2d 661 (Tex. Civ. App.-Fort Worth 1980, writ ref'd n.r.e.). While it is true neither party at the CCH used the language of Section 408.007, the claimant fairly clearly asserted an _____ date of injury which was the date that she e-mailed one of her supervisors, stating that her hand was hurting and she knows "it is probably from the way the desk is positioned." The carrier responded that the date of injury was "around 07-09" or "around the first part of July" based on statements the claimant had made. Some medical records have an _____ date of injury, others have an _____ date of injury and one has _____ date of injury. The evidence would even support some other date such as "a week or two" before _____. We would also note that while date of injury does not necessarily equate to a diagnosis, neither does the first symptom compel a finding of the requisite knowledge that one knows, or even should know that the condition may be work related. Texas Workers' Compensation Commission Appeal No. 001550 decided August 18, 2000; Smith, *supra*.

The hearing officer cites Texas Workers' Compensation Commission Appeal No. 020688, decided May 16, 2002, as authority for finding that the claimant failed to prove a date of injury and that, therefore, there was no need to resolve issues before him. Appeal No. 020688 is factually distinguishable from the instant case. In Appeal No. 020688 the injured employee was very vague as to when her symptoms started and the hearing officer found the date of injury to be "February 2001." The Appeal Panel reversed that decision stating that a specific date of injury is needed and it was reversible error for a hearing officer to find an entire month as a date of injury. In this case there is an abundance of dates for the hearing officer to choose from including a specific date where the claimant said her hands were hurting and it was probably due to the way her desk was positioned. This is substantially different from the employee in Appeal No. 020688 who could only say she thought her hand began hurting in February 2001.

When the date of injury is an issue, the hearing officer has wide latitude in picking a date when the claimant "knew or should have known that the disease may be work related," however the hearing officer may not refuse to resolve the issue before him by saying the claimant had not proven a date of injury. If the hearing officer believed the evidence before him was insufficient for him to make a determination on the date of injury the hearing officer has a duty to fully develop the facts required for the determination to be made. Section 410.163(b). We remand the case back to the hearing officer for the development of the facts necessary to decide the issues of date of injury, notice to the employer pursuant to Section 409.001, and disability, if any.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new

decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **EMPLOYERS INSURANCE OF WAUSAU, A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

RICK KNIGHT
105 DECKER COURT, SUITE 600
IRVING, TEXAS 75062.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Robert W. Potts
Appeals Judge