APPEAL NO. 93012
FILED FEBRUARY 12, 1993

A contested case hearing was held in (city), Texas, on November 24, 1992, (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) had given timely notice of a compensable trauma injury (carpet tunnel syndrome) and awarded benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art 8308-1.01 *et seq* (Vernon Supp. 1993) (1989 Act). Appellant (carrier) disagrees with the hearing officer's statement of the evidence and with several of his findings of fact and conclusions of law and asks that the decision be reversed. Claimant urges that there is sufficient evidence to support the determinations of the hearing officer and seeks affirmance of the decision.

DECISION

Finding the evidence to be sufficient to support the determinations of the hearing officer, the decision is affirmed.

The issues before the hearing officer were: (1) whether or not the claimant reported an injury to the employer within thirty days (pursuant to Article 8308-5.01(a)), and (2) whether or not the claimant's condition is a result of a repetitive trauma injury sustained in the course and scope of employment. The evidence consisted basically of the testimony of the claimant, medical reports, testimony and an ergonomics survey by an expert, and the testimony of the employer's health care manager. We have reviewed the statement of evidence in the hearing officer's Decision and Order and find that it fairly and

adequately sets forth the pertinent evidence that formed the basis of his determinations in this case.

Succinctly, the claimant testified that she had worked for the employer for some 15 years and she described the physical aspects of her job over the last 10 years. Her job, which had changed somewhat over the 10 year period, entailed testing specimens for stress, operating several testing machines, using micrometers and a computer. She indicated that her job was stressful, that she worked hard, frequently without any breaks, and that a lot of hand movement was involved. She stated she first noticed something wrong with her hands in 1988 but did not know it was work related and commenced taking mild pain medication. In January 1992, she began riding an exercise bicycle in the employer's ladies' restroom for about 20 minutes during lunch hour. She did this for approximately 7 days and noticed right upper arm discomfort and subsequently talked to (BT) the health care manager about the matter. She saw the employer's physician's assistant who asked about problems in her job and put her on a form of light duty. Apparently she did not get better, saw BT again and was advised to see her own doctor. She subsequently saw Dr. A) on February 28, 1992, and, according to her testimony, was advised she had carpel tunnel syndrome "big time" in both her right and left wrists. This was the first time she realized her condition was work related and she claims she did not know what carpel tunnel syndrome was. She stated that Dr. A told her to take the bill to the employer because "this is job related and they should be paying for it." She did this the following work day. She also testified that Dr. A indicated to her that she could not have injured herself on the exercise bike and that her condition does not happen over night. She stated she came into work with splints on both arms and subsequently was referred to a (Dr. M) who performed release surgery on her right wrist in June and indicated more surgery on her left wrist might be necessary as a result of her work. Her last day of work was September 8, 1992. She also stated that she disagreed with a survey done by an expert because she was never interviewed or asked about her job or performance, the survey did not show her working, rather, showed a large man who did not work the way she did, and the survey was invalid because it was based upon incorrect information and used a trainee who was not aware of the old system. She denied anything in her life style, other than her work, that would cause her injury and indicated that she had done crocheting in the past but not in the last two years.

A letter report from Dr. A diagnosed claimant's injury as carpel tunnel syndrome but does not reference her work. It notes that she has had right arm pain since (date of injury), and that she had been using an exercise bicycle and has also had some chiropractic treatment. A June 26, 1992 statement from Dr. M notes that:

(Claimant) describes the onset of her problem of hand pains after using an exercise bike on her breaks on the job. She has a hand intensive job as a lab technician for physical testing and has done that for a long time. The kind of

> work that this patient does is known for repetitive and stressful hand use. Carpel tunnel syndrome is a known occupational hazard in people with this kind of work. The incident with the exercise bike is probably a precipitating factor in a patient that is already prone to develop problems with her upper extremities. This is part of cumulative trauma or overuse of the upper extremities.

In progress notes dated July 22, 1992 from Dr. M following the claimant's surgery the following comments are made:

> (Claimant) is doing fairly well with her carpal tunnel surgery. Her grip strength is improving. She still had the other manifestations of cumulative trauma disorder in the upper extremities as noted previously but to a less impressive degree. On analyzing her job, it became clear that it entails significant hand use and raising the hands above the head, even in a light duty capacity as she was doing before her surgery.

(TS) testified for the carrier and indicated he was an independent consultant although he had worked for the carrier previously for some 11 years. He states he is a recognized expert in the area of ergonomics and the he was retained to do a survey of the claimant's job position. His report, which was admitted into evidence, reviewed two tasks in the laboratory where the claimant worked, and concludes that even though one task he evaluated had "high repetition" (per hour repetitions of 775 on one task and 1,870 per hour on the other) and that "force appears to be significant at times," that:

> The cumulative duration of any hand intensive work is not significant on a day-to-day basis. There is a considerable amount of rest-time between episodes of upper extremity work activity performed during the workday. Combined with low physical stress time available to the worker off-the-job, the nerves, tendons and tendon sheaths that function within the carpel tunnel have the opportunity to fully recuperate.

TS testified that, in his opinion, there is no reasonable link between occupational risk factors of the job and carpel tunnel syndrome of the right hand. He acknowledged he did not have any medical expertise and indicated that it was not significant that he did not interview the claimant or that the job had changed over the last 10 years. He said he was only called to review a job, not a person. He opined that this was an illness because it results cumulative over a period of time in small sequences and it is not a traumatic single incident injury. He stated he had made a half dozen recommendations for changes but only for further improvement in the work place.

BT testified that she did not recall whether the claimant said her injury was work

related in (date of injury) or January 1992 although the claimant did say there was something in the job that irritated her hand. BT testified that the claimant did indicate that her injury was job related when she returned from Dr. A, and that she brought her a document from the doctor. BT stated that she understood there was an exercise bike in the ladies' restroom for the use of the employees but that it was not a requirement of the employment.

The issues in this case clearly presented factual matters for the hearing officer to determine. The hearing officer, in his role of fact finder, is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Article 8308-6.34(e). Where, as here, there is conflicting evidence, he must resolve those conflicts, sift through the documentary evidence offered and weight and assess the credibility of the witnesses. Bullard v. Universal Underwriters Insurance Co., 609 S.W.2d 621 (Tex. App.-Amarillo 1980, no writ). In determining the sufficiency of the evidence, we will consider and weigh all the evidence in the case and set aside the determinations of the fact finder only if we conclude that they are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. In re King's Estate, 244 S.W.2d 660 (Tex. 1951). Where, as in this case, we find sufficient evidence to support the determinations of the hearing officer, there is no sound basis to alter his decision. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

The findings and conclusions with which the carrier disagrees are:

FINDINGS OF FACT

4.The Claimant had a hand intensive job with her Employer

7.The Claimant reported her injury to her Employer within 30 days of February 28, 1992.

CONCLUSIONS OF LAW

2.The Claimant had a repetitive trauma injury in the course and scope of her employment.

3.The Claimant first knew, or should have known, her condition was job related on February 28, 1992.

4.The Claimant reported her injury to her employer within 30 days of February 28, 1992.

As indicated, there were conflicts, and to some degree, inconsistencies in the

evidence. The carrier points to some evidence in the record that would tend to support different facts and conclusions. However, we do not find that evidence to be such that it amounts to the great weight and preponderance of the evidence in the case which would mandate different findings and conclusions. It is clear that the hearing officer gave considerable weight to the claimant's testimony. Her testimony, together with the evidence from the doctors she treated with, forms a sufficient foundation for the hearing officer's findings and conclusions. He would not necessarily have to totally discount the testimony and survey of the expert witness presented by the carrier, although he could do so if, in his judgment, the evidence was not entitled to much weight under the circumstances. Texas Employers Insurance Association v. Thompson, 610 S.W.2d 208 (Tex. App.-Houston 1981, no writ). The claimant's testimony concerning the job conditions and its effect on her, together with the statement of Dr. M to the effect that carpel tunnel syndrome is a known hazard in the type of work the claimant did, would support the linkage between the job activities and the claimant's condition which ultimately resulted in surgery. *See* Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. *Compare* Texas Workers' Compensation Commission Appeal No. 92122, decided May 4, 1992 where a claim for carpel tunnel syndrome was denied where the treating doctor, noting that carpel tunnel syndrome is frequently seen and has been related to certain job activities requiring frequent repetitive finger motion, assembly line type work or operation of vibrating tools, stated none of those fit the claimant's job description (a pipefitter). Similarly, the claimant's testimony, if believed, as it must have been by the hearing officer, is sufficient to support the determination that she reported her job related injury within 30 days from when she first knew or should have known her condition was job related. Article 8308-5.01(a). We find no great weight and preponderance in the other evidence that would cause us to disturb this conclusion of the hearing officer.

The decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge