APPEAL NO. 931092

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly V.A.C.S., Article 8308-1.01 *et seq*.) (1989 Act). A contested case hearing was held November 1, 1993, in (city), Texas, before (hearing officer). With regard to the issues before her, the hearing officer determined that the claimant did not sustain a repetitive trauma injury in the course and scope of her employment on (date of injury). (She also ruled that (date of injury) was the date the claimant knew or should have known that the alleged injury could have been related to her employment, and that she timely reported her alleged injury to her employer.) The claimant, who is the appellant in this case, contests the hearing officer's findings of fact and conclusion of law relating to the issue of injury in course and scope, pointing to evidence in the record which supports her claim. The respondent, hereinafter carrier, essentially contends that the hearing officer's decision is supported by the evidence and should be affirmed. The carrier also takes exception to the date of injury found by the hearing officer and her determination that the claimant knew or should have known the injury was job related on that date. However, carrier's pleading was not timely filed as an appeal and will not be considered as such. Texas Workers' Compensation Commission Appeal No. 92141, decided May 21, 1992.

DECISION

We affirm the hearing officer's decision and order.

The claimant was in the employ of (employer) from July 31, 1990, until March 6, 1992, although her last actual working day was July 16, 1991. (Claimant was terminated due to her failure to return to work for more than six months following a job related back injury which is not the subject of this claim.) On (date), the claimant was involved in an automobile accident; she was seen by (Dr. T) and treated for a concussion and a cervical strain. At some point following the accident, she began having pain in her hands which woke her up at night. One of Dr. T's reports on which the date is obscured, but the claimant testified it was January of 1992, records "weakness & paresthesia both hands appears related to auto accident." The claimant said that because Dr. T could not give her a diagnosis, he sent her for tests; she also began seeing (Dr. H) at a military base medical center because she said she no longer had private health insurance. On April 14, 1992, the claimant underwent nerve conduction studies and Dr. H subsequently diagnosed bilateral carpal tunnel syndrome (CTS). The claimant was prescribed wrist splints, which she continues to wear. She said she did not ask Dr. H the cause of her CTS, as she assumed it arose from the automobile accident. A second nerve conduction study, performed on January 4, 1993, yielded the same diagnosis.

The claimant said she returned to Dr. H on (date of injury), in the process of trying to settle a lawsuit involving her automobile accident. At that time, she said, Dr. H stated that the CTS was caused by repetitive movements and not from the accident. The next day, the claimant notified her employer of a job-related injury.

The claimant had worked for the employer as secretary to the company trainer, a job which she said required heavy use of a computer to prepare training materials and the company newsletter. She also said the job frequently required overtime, and she introduced the Employer's Wage Statement regarding her back injury as evidence of this. Her prior jobs as a temporary office worker, she said, only involved light typing and receptionist duties. Even though her last day of work for employer was July 16, 1991, she said her symptoms had not abated during the time she was not working. She said she couldn't say whether or not she had felt early symptoms of CTS prior to the automobile accident, even though such symptoms were not reported to a doctor until after that time. She has not worked since she left employer.

(Ms. R), a registered nurse who works for employer, testified that CTS was not always caused by repetitive motion, but could also be caused by things that can cause swelling such as hypothyroid condition, pregnancy, obesity, and estrogen therapy. The claimant said she has been on hormones following a hysterectomy in 1983 or 1984, but that her treatment has varied. Ms. R also testified that CTS could be triggered by diabetes. The claimant testified that she is a borderline diabetic, but said she had never been treated for diabetes. Finally, Ms. R stated that CTS could be triggered by what she called "double crush syndrome" in which compression at some point in the shoulder or the neck could be the causative factor; she said this could have been why the auto accident triggered pain that claimant had never experienced before. She said cervical and paraspinal EMGs could have ruled this out, and that claimant's EMGs had never tested areas higher than the elbow. Dr. H, however, wrote on July 6, 1993, that claimant's CTS was not related to her neck injury, and that an EMG of her left upper extremity did not show any acute or chronic degeneration. Patient notes from Dr. T, on which the date is obscured, say that "[i]f conduction studies did not show carpal tunnel I would expect pain and weakness to hand come (sic) from whiplash injury of c spine and be related to auto accident. However the studies find the damage in wrist area and not neck area therefore pain <u>is not</u> related to auto accident."

Ms. R was the individual to whom claimant reported her injury on (date). She said she was familiar with claimant's duties, which she described as "quite varied and paced," and which included, in addition to typing, taking care of the library, answering telephones, and assisting employees. She also disagreed that claimant worked excessive overtime, testifying from the wage statement.

At the carrier's request the claimant was seen by (Dr. Z), who on October 15, 1993, wrote as follows:

> It is difficult to say whether the critical factor with regard to the onset of her bilateral carpal tunnel syndrome was her accident or her job-related persistent typewriter and computer use. I do not think that she had a severe hyperextension injury as a result of her rear end collision and thrust recoil injury as she described. It is, however, well known that excessive use of the hands and wrists may produce the degenerative changes necessary to produce a symptomatic carpal tunnel.

The claimant disputes the following findings of fact and conclusion of law:

FINDINGS OF FACT

6.As a result of the treatment for the injuries related to her automobile accident, the claimant was diagnosed as having bilateral, [CTS] on April 14, 1992.[1]

11.The claimant did not have any symptoms of bilateral, [CTS] prior to her automobile accident; the claimant did not have any symptoms of bilateral [CTS] while working in a secretarial capacity for the Employer.

12.[CTS] may result from causes other than repetitive trauma, at least two (2) of which were experienced by the Claimant, hormonal therapy and a "double crush" resulting from the automobile accident.

CONCLUSION OF LAW

3.The claimant was not injured in the course and scope of her employment with the Employer.

The claimant in a workers' compensation case has the burden to establish by a preponderance of the evidence that his or her injury occurred in the course and scope of employment. Reed v. Aetna Casualty and Surety Company, 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). Under the 1989 Act, the term "injury" includes an occupational disease, which itself includes repetitive trauma. Section 401.011(26) and (34). In cases of this nature, there must be evidence of probative force of a causal connection between the employment and occupational disease. *See* Texas Workers' Compensation Commission Appeal No. 91026, decided October 18, 1991, and cases cited therein.

In this case the hearing officer found that the claimant had not sustained her burden. The 1989 Act provides that the hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). While there was evidence, in the form of the statement of Dr. H, that claimant's injury was work related, the hearing officer could, and did, choose to credit the testimony of Ms. R that other causative factors which were part of claimant's condition could result in CTS. The hearing officer may also have been influenced by the length of time between the time claimant last performed the activities which she contended were repetitive, and the time in which the symptoms presented--i.e., following an accident which resulted in neck injury and a period of time away from work. Other evidence included reports of Dr. Z, whose findings on causation were equivocal and could be read to support either party's position, and of Dr. T,

[1]Claimant says she is "not in total agreement" with this finding, although she recites evidence which is basically in support of the finding.

who first recorded claimant's symptoms of pain and originally said such "appears related" to the automobile accident (although Dr. T later retracted this opinion). Finally, claimant testified on her own behalf as to her job duties, which testimony was rebutted by Mr. R; however, as an interested party, a claimant's testimony only raises issues of fact for the determination of the fact finder. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ).

Our review of the evidence in the record convinces us that the hearing officer's decision is supported by the evidence and is not against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Accordingly, we will not substitute our judgment for that of the hearing officer.

The hearing officer's decision and order are affirmed.

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Lynda H. Nesenholtz
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Susan M. Kelley
Appeals Judge