APPEAL NO. 931163

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 on November 16, 1993, in (city), Texas, to determine whether the claimant sustained a compensable injury on (date of injury), and whether she had disability from June 7 to July 13, 1993, resulting from such injury. The hearing officer, (hearing officer), determined that the claimant suffered a strain to her wrist in the course and scope of her employment on (date of injury), and has disability as a result; however, he determined that claimant has pre-existing carpal tunnel syndrome (CTS) which is not part of her compensable injury. The claimant did not appeal this determination. The carrier, however, contends on appeal that the hearing officer's finding that claimant suffered bilateral wrist strain is against the great weight and preponderance of the evidence.

DECISION

We affirm the hearing officer's decision and order.

The claimant had been employed as a dishwasher by (employer) since May 5, 1993. She said she began experiencing problems with her hands on or about (date of injury), which she attributed to getting industrial strength dishwashing liquid into cuts on her hands and the fact that she was never given gloves.

The claimant first saw a doctor. (Dr. W), on May 22nd. A note from Dr. W on that date diagnosed left forearm strain and released her to return to work the following day. Dr. W later wrote that claimant's pain and numbness worsened over the next two weeks and involved both hands. Her x-rays and physical exam were unremarkable but because she did not improve with rest, splinting, and anti-inflammatory medication, CTS was suspected and she was referred to (Dr. P). In a July 2nd letter Dr. W said it was "very unlikely" that CTS would become a problem in the short time she worked as a dishwasher, unless she had pre-existing conditions such as diabetes or hypothyroidism which blood studies ruled out. Dr. W also stated that claimant was never told that the dishwashing soap caused her problems.

Dr. P found claimant to have a positive Phalen's test at the wrist with an otherwise unremarkable physical examination. He wrote, however, that he was not convinced that the claimant had CTS, and recommended a second opinion before any surgery was performed. As a result the claimant was seen by (Dr. MG), a neurosurgeon, who on August 27th stated his impression of early CTS, left greater than right, exacerbated by claimant's use of her hands. He found her symptoms mild and stated she could return to normal activity, although he suggested she wear gloves particularly when working in hot soapy water. He later wrote in response to a letter from carrier's attorney that he did not believe that the soap used at work caused the claimant's complaints, nor that her activities at work were the "primary cause" of her symptoms, stating that "if she indeed does have [CTS], then the everyday activities at home would have been just as much a cause or exacerbation of the cause of her symptoms as were her work activities."

On July 12th, (Dr. C) reviewed claimant's medical records and other documents at carrier's request. Dr. C noted that there is no evidence that any doctor attributed her condition to a toxic or allergic reaction relating to the soap. As to whether claimant had CTS, Dr. C said it was "unlikely that any significant permanent exacerbation or damage to any pre-existing [CTS] could have occurred during the period" of claimant's employment with employer. However, he said that nerve conduction studies would be necessary to diagnose CTS and "[i]t is probable that [claimant] has tendinitis or acute muscle strain of the wrists" which should resolve with conservative treatment.

The evidence showed claimant was taken off work on June 7th, but was released to full-time work on July 13th. Although she had not returned to work at the time of the hearing, the claimant was only claiming disability for the June 7th-July 13th period.

The hearing officer apparently agreed with doctors' reports indicating that any CTS suffered by claimant could not have arisen from her employment with employer due to its short duration. (No issue was raised regarding whether claimant was last injuriously exposed to an occupational disease while working for employer, and the finding of fact stating that claimant had pre-existing CTS was not appealed by either party.) However, the carrier appeals the hearing officer's finding that the claimant suffered a wrist strain while in the course and scope of her employment; it points out that Dr. C's opinion, on which the hearing officer's finding was based, stated that further studies would be necessary to conform CTS, which was prior to the reports of Drs. P and MG, which found CTS.

The very limited medical evidence, as noted above, includes Dr. P's July 13th report (post-nerve conduction studies) which indicated slight abnormality in the median nerve distal latency, with Dr. P stating that "[c]linically, this picture is not really fitting with a carpal tunnel syndrome." Accordingly, Dr. P referred claimant to Dr. MG, who found "early" CTS with "very mild" symptoms, with normal neurological examination. With the evidence in this posture, we cannot say that the hearing officer's determination to credit Dr. C's findings to be so against the great weight and preponderance of the evidence as to be manifestly unfair and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). His opinion certainly is not strongly outweighed by that of Dr. P, who did not believe claimant had CTS, nor even Dr. MG, who found early CTS but recommended claimant return to normal activities. We also note that claimant's initial diagnosis, by Dr. W. was forearm strain. 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). He is entitled to resolve conflicts in the testimony, including medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Likewise, since the record shows that claimant's doctor took her off work for the period in which the hearing officer found claimant to have disability, we find his determination of the issue of disability to supported by the evidence, and not against the great weight and preponderance of the evidence. In re King's Estate, *supra*.

For the foregoing reasons, we find no error in the hearing officer's decision. Accordingly, his decision and order are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge