APPEALS PANEL NO. 94010

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq*.). On December 8, 1993, a contested case hearing (CCH) was held in (City) Texas, with _____ presiding. The sole issue presented for resolution was: "Did the Claimant sustain a compensable injury in the form of an occupational disease (repetitive trauma injury) on or about (Date of Injury)?" The hearing officer determined that the appellant, claimant herein, had not established a causal connection between her work and her neck injury and that claimant had not sustained a compensable repetitive trauma injury to her neck on or about (Date of Injury).

Claimant contends that evidence shows claimant's condition was the result of a work-related repetitious traumatic activity. Respondent, carrier herein, citing case law and Appeals Panel decisions, responds that the decision is supported by the evidence and requests that we affirm the decision and order.

DECISION

The decision of the hearing officer is affirmed.

The facts of the case are not in great dispute. Claimant was employed by (employer), a natural gas pipeline company, as an engineering technician. It is undisputed that a principal part of claimant's position required detailed work and required her to bend over maps, spread out on a desk or table, in order to locate various features such as wells and existing pipelines. Claimant, as evidenced in medical records, had a long history of neck problems going back several years. Claimant would from time to time see a chiropractor for relief of these problems. Claimant testified she again began having neck problems in May 1993 (all dates are 1993, unless otherwise noted) and saw a chiropractor. (Medical records purporting to be those of (Dr. M) are in evidence, but the records do not have the doctor's name or signature.) Claimant complained of "pinched nerves in neck" on May 12th, and had additional complaints on May 19th, June 9th, June 18th, June 25th, June 30th, July 14th, July 21st, July 28th, August 9th and August 16th regarding her neck. Claimant testified she suspected her problems might be work-related but was not told so by her doctor. Claimant testified she spoke with her supervisor in June or July about getting a drafting table to ease her neck pain. Claimant said her supervisor told her he would look into it (but apparently nothing happened because claimant did not get the drafting table). Some time in early August (a week before (Date of Injury)), claimant said she was given an important assignment, requiring detailed map work on a "very large" map and required to meet a deadline. Claimant testified her work intensified, she had to work overtime and her neck pain increased during this week. Claimant testified that she took increased doses of pain medication but was able to complete her work and put the map in the mail on (Date of Injury). Claimant testified when she woke on (day after date of injury), she could not move her arms and neck. Dr. M recommended claimant go to the hospital on (day after date of injury), and an emergency MRI scan of the cervical spine showed "a large ruptured disc at C5-6 causing spinal cord compression with a smaller disc at C6-7."

Claimant was admitted to the hospital and the alternatives of surgical versus conservative therapy were discussed. Claimant initially opted for conservative therapy and steroid injections but eventually had surgery on October 28th. Claimant has not been back to work since (Date of Injury).

Claimant's treating doctor, and eventually surgeon, was (Dr. G). Dr. G in a hospital admission note recites claimant's medical history and the decision to admit claimant. His discharge summary confirmed the ruptured cervical disc at C5-6, spinal cord compression, and claimant's initial election of conservative therapy. As the hearing officer notes, the medical evidence regarding causation "is limited." A September 22nd letter report by Dr. G states that he feels that "the most likely cause" of claimant's problem "is long periods of prolonged neck flexion" and "I think it is conceivable that your cervical disease is related to previous work environment." In an October 8th report Dr. G states "I want to reiterate that I do think that your neck problems are secondary to your job situation." In an October 11th report a physical therapist stated ". . . it is apparent that
chronic positioning and cumulative trauma maybe the causative factors to her present condition."

The hearing officer, at the CCH, enunciated the applicable legal principles and made the parties aware of Texas Workers' Compensation Commission Appeal No. 92340, decided September 3, 1992. Carrier also argued the applicability of Texas Workers' Compensation Commission Appeal No. 92272, decided August 6, 1992; Texas Workers' Compensation Commission Appeal No. 92715, decided February 16, 1992; Texas Workers' Compensation Commission Appeal No. 93305, decided May 26, 1993; and Texas Workers' Compensation Commission Appeal No. 93461, decided July 19, 1993. The hearing officer also indicated he had reviewed Texas Workers' Compensation Commission Appeal No. 92525, decided November 19, 1992. Claimant's position was that she suffered a "repetitious physically traumatic activity by having to bend her neck forward [forward flexion] for long periods of time pouring over large maps."

After considering the evidence and law, the hearing officer determined in pertinent part:

FINDINGS OF FACT

3. The Claimant did not prove that the frequency or duration of neck flexion was sufficient to cause the injury made the basis of this claim.

4. The Claimant did not prove that bending her neck was inherent in her type work as compared with employment generally.

5. The Claimant did not prove that she was exposed to an increased incidence of repetitious physically traumatic activities in her work

place.

6. The medical evidence in this case is not based on "reasonable medical probability."

7. The medical evidence is insufficient to establish a causal connection between the Claimant's work and her cervical injury.

8. The Claimant did not establish a causal connection between her neck injury and her work activities on or about (Date of Injury).

CONCLUSIONS OF LAW

2. The Claimant failed to prove, by a preponderance of the evidence, that she sustained an occupational disease (repetitive trauma injury) on or about (Date of Injury).

Claimant appealed the above cited determinations, basically saying she had offered the proof necessary to prevail and in essence saying the hearing officer's determinations were against the great weight of the evidence.

The hearing officer, both at the hearing and in his statement of the case, recited the 1989 Act definitions of injury to include occupational disease and the latter term to include a repetitive trauma injury. Sections 401.011(26) and 401.011(34). Initially we would note that the claimant has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 92044, decided March 23, 1992. In Appeal No. 92272, *supra*, the Appeals Panel cited Davis v. Employers Insurance of Wausau, 694 S.W.2d 105, 107 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.) as stating the element of causation in repetitive trauma cases to be ". . . that in order to recover for a repetitive trauma injury one must not only prove that repetitious, physically traumatic activities occurred on the job, but also prove that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally." *See* the Appeals Panel discussion of proof of repetitive trauma injuries in Appeal No. 92272 and Texas Workers' Compensation Commission Appeal No. 92220, decided July 13, 1992. It should be noted, however, that in both Davis (a flight attendant whose physically traumatic activities were handling heavy carts, trash containers and bending and twisting) and in Texas Employers Insurance Association v. Ramirez, 770 S.W.2d 896 (Tex. App.-Corpus Christi 1989, writ denied), where the repetitive trauma activity was bending, twisting and other types of maneuvers required to operate a low ironing board, the claimant's injuries were held compensable based on medical evidence that the activities could cause (or aggravate) the complained of condition.

The carrier and the hearing officer, in the instant case, cite many of our "sitting"

cases apparently assuming that claimant was sitting at her desk or table working on the maps in question. This may have been the case; however, there is no evidence that claimant was always in a sitting position as opposed to standing over the desk and table which had the maps. We would distinguish some of the cited cases from the instant case on different grounds. The reason the claimant recovered in Texas Workers' Compensation Commission Appeal No. 92314, decided August 28, 1992 (a case cited by carrier at the CCH), was because the truck driver claimant, in that case, in addition to sitting while driving the truck, was also "being continually and repeatedly `beat' and vibrated" due to bad shocks and a bad suspension system. In Appeal No. 93305, *supra*, where a security guard's only duty was to sit in a truck and watch a gate, we held that simply sitting in a vehicle, without more, did not constitute a repetitious, physically traumatic activity as contemplated by the 1989 Act.

Eliminating cases where the only activity was merely sitting, we come to what the hearing officer characterized as the underlying question; namely does repetitive neck bending while pouring over a large map spread out on a desk or table for long periods of time fit within the definition of repetitious physically traumatic activity and if so, was there a causal connection between the activity and claimant's injury. In cases in which a layman could, from his general experience and common knowledge understand a causal connection between the employment and the injury, expert testimony is not required. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). Conversely, in cases where a layman would not, from his general experience and common knowledge understand a causal connection between the employment and the injury, expert medical testimony would be required. *See* Pegues, *supra*. In such cases expert medical testimony showing a "reasonable probability" of a causal connection between the employment and the injury is sufficient to support submission of the issue to the trier of fact. Appeal No. 92272, *citing* Hernandez v. Texas Employers insurance Association, 783 S.W.2d 250 (Tex. App.-Corpus Christi 1989, no writ).

In our opinion a layman would not understand, from his general experience and common knowledge, how claimant's herniated cervical disc resulted from bending over a desk or table for long hours. As in Appeal No. 92272, we believe that expert medical evidence is required to establish the causal connection between working on maps on a table and a herniated cervical disc, and that such testimony would need to show a reasonable probability of a causal connection. In Appeal No. 92272, we said that opinions of doctors that "it is possible," "certainly could set up a herniation" and it was "definitely probable" do not show a reasonable probability of a causal connection between the employment and the injury. In the instant case, Dr. G stated that he thought claimant's "neck problems are secondary" to the employment and "it is conceivable" that the cervical disease is related to the work. A physical therapist stated that the work "maybe the causative factor" of the injury. We have commented that the fact that a claimant's symptoms occurred during a period of employment does not automatically mandate the

conclusion that the employment was the cause of the injury. Texas Workers' Compensation Commission Appeal No. 93462, decided July 23, 1993; *citing* Hernandez, *supra*. The hearing officer found the evidence insufficient to prove that the frequency or duration of neck flexion caused the injury and that bending her neck working on the maps was inherent in claimant's type of work compared to employment in general. The hearing officer further found the medical evidence insufficient to establish a causal relationship between claimant's work and her neck injury. "It is conceivable" and work "maybe" the causative factor is very similar to the language that we held in Appeal No. 92272 not to show a reasonable probability of a causal connection between the work and the injury. The hearing officer clearly considered many of the cited decisions and applied the proper standards. We are unwilling to say, as a matter of law, that his determinations were incorrect.

Having reviewed the record, we find no reversible error and sufficient evidence to support the hearing officer's factual determinations. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (Tex. 1951).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge