APPEAL NO. 94112

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. On September 2, 1993, a contested case hearing was held in (city), Texas as, with (hearing officer) presiding. He determined that respondent (claimant) has a repetitive trauma injury to her back and neck which caused disability from (date), to the date of the hearing. Appellant (carrier) asserts that claimant was not injured by repetitive trauma arguing that there was no objective medical evidence of injury, that pain is not sufficient to constitute injury, and that insufficient time elapsed for a repetitive trauma injury; it also states that claimant did not show that the injury caused her to be unable to work. Claimant did not reply.

DECISION

We affirm.

Claimant began work as a cashier for a car dealer (employer) in December 1992. She testified that her work included making entries in a computer, using a cash register, filing, and responding to other employees and customers. During the week of (date of injury), she worked harder and longer because monthly reports were due and another person, who did similar work, was off that week. Claimant also testified that the computer she used was on a counter, the monitor was not at the right height, and she had no support for her arms when using it (approximately four hours per day). While her shoulders began to hurt earlier in the week, she testified that by the end of the week her neck hurt, her arms and wrists were numb and tingling, and her jaw felt numb on the left side. She decided to see a doctor when the jaw became numb. She saw (Dr. Y), on May 28, 1993. She included in her history that she had been in a car accident and had broken her left shoulder, with no residual symptoms, over 10 years ago. She indicated to Dr. Y that she thought her problem was caused by her work.

Dr. Y examined claimant and considered pictures she took of her work area. He made several diagnoses; among them were inflamed nerves, muscle atrophy, and nerve root irritation. He found muscle spasms in the area of the neck and shoulders and limited range of motion. He stated in a July 20, 1993, letter that repetitive motions precipitate the above described conditions. He added that in his opinion claimant's job duties "contributed to her current condition." Dr. Y restricted claimant's work to avoid "heavy lifting, computer work, prolonged sitting, and repetitive motions".

The carrier pointed out through testimony of (SS), who is the office manager for employer, that claimant was not happy with her work schedule. She stated that claimant's work week of (date of injury) was 49 hours long. In her opinion, when claimant on June 4, 1993, told her of her work restrictions, claimant was trying to move from her cashier job to the receptionist job, which she had wanted prior to any talk of injury. Claimant was not placed in the receptionist position and was not given work consistent with the restrictions imposed on her. In fact, SS, in her statement of June 18, 1993, said that she told claimant that until she could bring a doctor's statement allowing her full return to work, she needed to

be off work. Claimant testified that she has not worked since that time and is scheduled to see an orthopedic surgeon in the near future. In answer to the hearing officer, she stated that her shoulders are still painful and that she still has numbness although she is better than she was when still working. She also testified that Dr. Y has not removed her work restrictions.

The carrier states that there is no objective medical evidence of injury. Texas Workers' Compensation Commission Appeal No. 92300, decided August 13, 1992, pointed out that objective medical evidence is not necessary to prove injury, but it should be considered when available. In this case Dr. Y does state that he believes the work contributed to the problem. (*See* Texas Workers' Compensation Commission Appeal No. 93339, decided June 16, 1993, which indicated that a finding that work was a contributing factor sufficiently supported a determination of disability.) While carrier indicates that claimant only experienced pain, and pain alone does not constitute injury, Dr. Y found limited range of motion and spasm; he diagnosed inflammation and atrophy. Carrier also attacked the time period of one week as being insufficient for a repetitious physical trauma injury. Claimant testified that she had worked at the same duties for approximately six months but only during the last week of work, which was longer and harder, did she notice symptoms.

In conjunction with its appeal of the decision regarding a compensable injury, carrier cited Texas Workers' Compensation Commission Appeals No. 91091, decided January 13, 1992, No. 92025, decided March 16, 1992, and No. 92048, decided March 20, 1992. While Appeal No. 91091 did involve a very short period of work in regard to an allegation of repetitious physical trauma, it also involved a prior injury with medical opinion stating there was no difference in tests before and after the questioned injury and a doctor's opinion that work was not a cause. The hearing officer's determination of noncompensable injury was affirmed. Appeal No. 92025 was cited by carrier for the proposition that an occupational disease must be inherent in the work; the hearing officer in that case found no compensable injury after one doctor found no relationship of carpel tunnel syndrome to work and another found it "secondary to" arthritis - with aggravation from work, only "possible". The Appeals Panel affirmed the hearing officer. Then in Appeal No. 92048, cited to assert that there must be a causal link, the Appeals Panel also affirmed a hearing officer's decision against the claimant. In that case, the doctor did not even say that work was a "possible" cause of a back condition; the work activity in question was described as "infrequent". Carrier also cited Texas Workers' Compensation Commission Appeal No. 93205, decided April 30, 1993; that review dealt with mental trauma, however, which is not the focus of the case before us.

The Appeals Panel cases cited above are not inconsistent with the decision of the hearing officer concerning injury. The evidence, including length of time worked, medical opinion, and indication that injury occurred, sufficiently support the finding that a compensable repetitive physical trauma injury occurred.

The carrier also states that claimant is capable of working, pointing to her willingness to work for employer as a receptionist. It adds that she has not looked for work elsewhere

and stresses that disability must be based on a compensable injury which it re-argues does not exist.

There was no evidence that claimant had ceased being an employee of employer. The evidence shows that claimant took her doctor's work restrictions applicable to her and provided them to SS, indicating a willingness to work within the restrictions. SS did not choose to provide work within claimant's restrictions. Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991, stated that when a medical release is conditional, disability has not ended unless evidence shows that employment was reasonably available which met the conditions of the release. There was no evidence of such available work presented at the hearing. Appeal No. 91045 went on to observe that when a conditional medical release is in effect, there is no requirement for positive action placed on a claimant to seek employment.

The carrier's assertion that the work injury was not shown to have caused disability also cites several Appeals Panel decisions. Several of these do indicate that the claimant must show a connection between the injury and inability to obtain or retain employment. The carrier also cites Texas Workers' Compensation Commission Appeal No. 92085, decided April 16, 1992, for the proposition that reasonable medical probability must make the connection. That appeal dealt with hepatitis and the necessity in that case for medical evidence to show the cause of injury; in that case no medical evidence even stated that hepatitis could have been transmitted. Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992, indicates that disability may be found based on lay evidence alone. Other citations of carrier in regard to disability are not relevant to this fact situation, such as injury to one part of the body affecting another or mental trauma.

The evidence sufficiently supports the determination that claimant has disability from June 4, 1993, to the present. There was no evidence that claimant had been released to unrestricted work. Claimant testified she could not work. The limitations on work were set forth by the same doctor who stated that claimant's work contributed to her injury.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410. 165. The Appeals Panel will not reverse a decision of the hearing officer based on factual determinations unless the decision is against the great weight and

preponderance of the evidence. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Finding that the decision is not against the great weight and preponderance of the evidence, we affirm.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge