APPEAL NO. 94175

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 25 and December 28, 1993, in (city), Texas, with (hearing officer) presiding as hearing officer. The issues at the hearing were whether the appellant/cross-respondent (claimant) sustained a wrist injury in the course and scope of employment on (date of injury), and whether she reported the injury in a timely manner. The hearing officer determined that she did sustain an injury in the course and scope of her employment, but failed, without good reason, to timely report her injury to her employer. The claimant appeals the decision of the hearing officer regarding lack of timely notice contending that this portion of the decision is against the great weight of the evidence. The respondent/cross-appellant (carrier) replies that the decision in this regard is supported by sufficient evidence. The carrier also appeals the decision of the hearing officer that the claimant suffered an injury in the course and scope of her employment as not supported by sufficient evidence and contrary to the great weight and preponderance of the evidence. The claimant replies to carrier's point of error that the decision is supported by sufficient evidence.

DECISION

The decision and order of the hearing officer are affirmed.

The claimant began working on October 6, 1992, for the employer as a gas cylinder filler. According to the evidence, this job included rolling empty gas cylinders of varying sizes into rows at the refill station, checking the structural integrity of the cylinders, removing various fittings and protective caps, opening valves, attaching refilling hoses from a supply manifold and turning on the gas supply. When the cylinders were filled, the job required that the hoses be disconnected in fairly rapid fashion to prevent leakage, all valves be reclosed and protective caps screwed back on.

The claimant testified that she filled anywhere from 80 to 200 cylinders a day. She said that she was told by (Mr. F), the director of operations, that her hands would hurt until she developed the necessary muscle strength for the job. According to her testimony, her hands began hurting about a week after she started work. She first saw (Dr. O) on Sunday, October 25, 1992, because she had fractured her foot at home in an accident unrelated to the claimed work-related injury. During her visit with Dr. O, she said she asked about her hands. Dr. O apparently advised the claimant that she needed to wear support braces or splints. She went to work the next day with the braces and said she immediately reported to a supervisor who sent her to Mr. F for approval to wear the braces on the job. According to the claimant, Mr. F said she could wear the braces, but only if she got a release from a doctor. She went back to Dr. O that same day and got a release which was a note which read: "Please allow [claimant] to work with her wrist sprints on (they are necessary due to spasms in her hands). Also allow her to work on her foot." When she returned to work, the claimant said Mr. F told her not to discuss with anyone why she was wearing the braces.

The claimant described a meeting on November 4, 1992, in which Mr. F allegedly told her she almost got fired because (Mr. M), the company owner, was afraid of a lawsuit, even though she never told anyone she intended to file a lawsuit. The claimant stated that the pain got worse in December 1992. She began to lose her gripping ability and started dropping things. She said she told Mr. F she wanted to see a doctor again, but he allegedly told her she would have to pay for the visit herself. According to the claimant, Dr. O would not undertake medical care in a workers' compensation case, but would treat her only if she personally paid for the visit. She worked until January 11, 1993, when, because she was dropping everything, Mr. F told her to clock out and find a doctor. On this same date she saw (Dr. A) who agreed to see her on a one-time evaluation basis. Dr. A wrote a brief note which read: "This patient needs to be off work due to illness." His progress note for this one visit reflects a diagnosis of acute carpal tunnel syndrome (CTS).

The claimant testified that she returned to work with Dr. A's note and presented it to Mr. M who then fired her. On January 12, 1993, she went to a hospital emergency room. X-rays showed "no definite bony or joint abnormality," but she was diagnosed with possible bilateral CTS and referred to (Dr. R). In a letter of March 24, 1993, Dr. R stated that his examination showed "classic physical signs of a bilateral carpal tunnel syndrome . . . I think it would be possible and even medically probable that her employment and the work she described doing did cause or definitely at least aggravate symptoms of a [CTS]."

The claimant also introduced into evidence two pre-employment physicals which reflect normal upper extremities and good health.

Mr. F testified that prior to (date of injury), the claimant never complained of any pains. On (date of injury), according to his testimony, she told him she saw Dr. O because she hurt her foot, but never mentioned any pain or injury in her hands. When she arrived at work with the hand braces, he sent her back to the doctor to get a work release. He said, however, that the claimant gave no indication she needed the braces for a wrist injury, but said they were "for support." He denied ever telling the claimant she was lucky she did not get fired and said no one at the company was ever disciplined for filing a workers' compensation claim. He also testified that he never told her not to discuss the braces with other employees and that everyone would drop cylinders, but he never noticed the claimant doing this with more frequency than others. He also denied making any statements about the need to build up the hand muscles on the job or suggesting "home remedies" to ease the pain. He said that employees injured on the job were referred at no cost to them to a local clinic for evaluation, but even when she complained of her wrists hurting "real bad" on January 11, 1993, she said nothing about any job-related injury. He stated that she called him after her conversation with Mr. M on January 11, 1993, to say he fired her and that she was "going to claim on it." Mr. F said that she never filled 200 cylinders in a day, but at most 180, and averaged 60 to 80. In his experience, no one ever got CTS on this job, just soreness which was usually over in a week.

Mr. M testified that in January 1993, the claimant told him she hurt her wrists and could not continue to work. He told her to see a doctor if she had to, because she could

not work without a medical release. He denied firing her or anyone for filing a workers' compensation claim. He stated she told him she was wearing the braces for support and he knew she was having problems with her wrist, but she never said the problems were related to an on-the-job injury. He said he never knew before January 1993 that the claimant was claiming a workers' compensation injury.

(Ms. T), the officer manager, testified that she had no information before January 11, 1993, that the claimant was making a workers' compensation claim. She said she overhead Mr. M's conversation with the claimant that day, but never heard him tell her she was no longer needed. She did hear him tell the claimant she needed a medical release to return to work and there was no light duty available.

(Mr. B), the claimant's immediate supervisor, also testified that the claimant never mentioned any injury to her hand, wrist, or arm before January 11, 1993. He stated that she told him the braces were for support and he never questioned her about them.

The carrier introduced a videotape which depicted the tasks done by the claimant. The tape was reviewed by (Dr. H), a medical consultant to the carrier. Having reviewed this tape, the claimant's medical records and a resume of her employment experience, but without a personal examination of the claimant, Dr. H was of the opinion that the claimant's activity on the job for two weeks would not cause CTS in a previously normal individual. Nonetheless, after also reviewing Dr. R's opinion and findings, Dr. H, by letter of December 24, 1993, expressed the belief that the claimant "clinically has bilateral [CTS]." He believed her work would aggravate any pre-existing CTS, but would not cause it.

The hearing officer found that the claimant "injured her wrists" in the course and scope of her employment on (date of injury). The carrier has appealed this determination along with an additional finding that the claimant "had a hand-intensive job requiring repetitive use of the wrist." The carrier asserts that there is insufficient evidence to establish an injury in the course and scope of her employment, "to make a causal connection between the physical problems about which [the claimant] complains and the type of work the Claimant was performing," or to establish CTS related to her work.

The claimant in a worker's compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). There was conflicting evidence presented primarily by the claimant and by Mr. F as to the intensity of the work required of the claimant. The hearing officer is the sole judge of the relevance and materiality of this evidence and of its weight and credibility. Section 410.165. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. Burelsmith v. Liberty Mutual Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). The hearing officer had the responsibility to determine whether the nature of the claimant's job was such that it could have caused the injury claimed. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of

the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629 (Tex. 1986). We believe that the videotape, in conjunction with the testimony of the claimant introduced at the hearing, provided a sufficient basis for the hearing officer's finding that the claimant was engaged "in a hand intensive job."

With regard to the issue of whether the claimant proved an injury, we observe that much of the carrier's appeal deals with the legal sufficiency of a finding of CTS, pointing out that, although there is medical opinion to the effect that she has CTS, there is no medical evidence that she sustained this injury in the course and scope of employment. The carrier offered speculation as to possible causes of this injury, as well as lay testimony that no one else got CTS working in the claimant's job and that it was highly unlikely, if not impossible, to sustain CTS or other wrist injuries in such a short period of time (two weeks) on the job. The hearing officer, however, did not find CTS, but a wrist injury. We have pointed out in the past that injury may be proven by the testimony of the claimant alone and objective medical evidence is not required to establish that particular conduct resulted in the claimed injury, except in those cases where the subject is so technical in nature that a fact finder lacks the ability from common knowledge to find a causal basis. *See* Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. We believe in this case that the testimony of the claimant alone, if found credible by the hearing officer, is sufficient evidence to establish that the claimant injured her wrist on the job as she described in her testimony. The hearing officer found this testimony credible and in doing so obviously discounted the carrier's theory that she had not worked long enough to sustain this injury. This testimony provided evidence of a causal link between the claimant's job and her injury. Having reviewed the record, we conclude that the hearing officer's decision that the claimant sustained a compensable wrist injury in the course and scope of her employment is supported by sufficient evidence and is not against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

The claimant appeals that part of the decision of the hearing officer that she did not timely report her alleged injury. Section 409.001(a) in pertinent part requires an injured employee to report the injury to a supervisor not later than the 30th day after the date the injury occurs. Section 409.002 provides exceptions to this 30-day rule in cases where the employer or the carrier has "actual knowledge" of the injury or "good cause" exists for failure to provide timely notice. The claimant did not rely on the "good cause" exception to timely notice, but contended both at the hearing and on appeal that she reported her wrist injury on (date of injury), the day after her visit with Dr. O. The hearing officer found the injury to have occurred on this date, but that the claimant first reported it to the employer in January 1992. In opposition to this finding, the claimant says she provided "enough information" on (date of injury), that the employer "could not avoid knowing that I was hurt on the job."

Notice of an injury is deemed sufficient if it advises the employer of the general nature of the injury and that it is job related. It has also been held that notice of the injury can be dispensed with if the employer has actual knowledge of the injury. *See* DeAnda v. Home Insurance Co., 618 S.W.2d 529 (Tex. 1980); Section 409.002(1). Whether or not a

claimant provided her employer with the required adequate notice or whether, alternatively, the employer had actual knowledge of the injury, is a question of fact to be determined by the hearing officer based on an evaluation of whether the preponderance of the evidence "would lead a reasonable man to conclude a compensable injury had been sustained. Miller v. Texas Employers' Insurance Association, 488 S.W.2d 489 (Tex. Civ. App.-Beaumont 1972, writ ref'd n.r.e.).

In the case under appeal, the claimant points to numerous pieces of evidence, including her conversation with Mr. F of (date of injury), in which she claims to have "directly told him" she injured her wrists, her assertion that it was common knowledge that everyone in her position initially experiences weakness in the wrists, and "the visible daily reminder" of her wrist braces, that would require a finding of timely notice. The supervisory personnel who testified were unanimous in stating that, though admittedly they did not ask or pursue with the claimant why she wore wrist braces, she never told them she hurt her wrists in the course and scope of her employment, but that she needed the braces to support her hands. The only medical evidence available from (date of injury), to the following January was Dr. O's brief note asking that the claimant be allowed to wear braces because of spasms in the hands. The hearing officer could believe the testimony of the employer's witnesses over that of the claimant and his finding that she did not notify her employer within 30 days of the date of the injury is not against the great weight and preponderance of the evidence. Also, as to the question of actual knowledge of the injury, there was sufficient evidence to support a conclusion that the claimant gave the impression she was attempting to support her wrists through the use of the braces to avoid future injury, not to alleviate the pain of an existing or past injury. While the claimant, according to her testimony, may have been motivated not to press a claim for an injury or to downplay an injury for fear of losing her job, the facts and circumstances in evidence also support the conclusion that the claimant did not communicate an injury in such a way that a reasonable person could have concluded a compensable injury had been sustained. Similarly, the hearing officer could have chosen not to credit the claimant's testimony that her braces were a daily reminder of an injury or that everyone in her position experienced wrist discomfort if not injury. We observe that different inferences might reasonably be drawn from the evidence but this is not a sufficient basis to reverse a decision where there is some probative evidence to sustain the decision. Texas Workers' Compensation Commission Appeal No. 92308, decided August 20, 1992. Given this evidence, we cannot conclude that the hearing officer's finding that the claimant did not timely report a work-related injury is so against the great weight and preponderance of the evidence and to be clearly erroneous and manifestly unjust.

We affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge