

APPEAL NO. 980022

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 5, 1997, a contested case hearing was held. She (hearing officer) determined that respondent (claimant) sustained an occupational disease on _____, and had disability from March 25, 1997, to May 14, 1997. Appellant (carrier) asserts that the decision is against the great weight and preponderance of the evidence. The claimant replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____. She testified that she had worked for employer since March 1981 as a reservation agent. She described her work as providing information on the telephone. She agreed that since June 1996 the employer had provided a new system that included new headsets and microphones which transmitted a much softer or quieter voice. She said that theoretically the new system did that, but it was so sensitive it also picked up others adjoining her in the room so that she was not always able to speak more quietly in order to overcome other noise. The employer taped and evaluated reservations agents when talking on the phone. The hearing officer was provided a video, with sound, of claimant's work area in 1997.

Claimant also testified that she has had laryngitis in the past and has had laryngitis in conjunction with sinus problems. She stated though, that she never has had vocal cord nodules before. A "speech language pathologist," (YP) saw claimant on March 31, 1997, performed a videostroboscopy, and said in a report dated June 11, 1997, that claimant's examination in March showed a "left hemorrhagic" true vocal cord, which in June had improved, as had the nodules by decreasing in size. YP also said:

The patient has been diagnosed with vocal nodules. Vocal nodules are due to vocal abuse and misuse. The patients work duties involve constant use of her voice on the telephone for an eight-hour day with a thirty minute lunch break and two fifteen minute breaks. The patients history of laryngitis and sinus problems are also contributing factors to vocal problems. During these periods with constant use of the voice can result in a vocal pathology (*i.e.* vocal nodules).

Claimant testified that her family doctor, (Dr. R), had treated her in the past for sinus and hoarseness by prescribing antibiotics. In March 1997, the antibiotic did not help and Dr. R referred her to (Dr. T) an otolaryngologist. To claimant's knowledge, no viral infection was found. Dr. T examined claimant on March 25th, took her off work, and referred her to YP for therapy. Dr. T said in a letter to the Texas Workers' Compensation Commission on May 22, 1997, that claimant "does have vocal cord nodules which are

speech related." In another letter "To Whom It May Concern," dated June 4, 1997, Dr. T said that claimant had vocal cord nodules and should rest her voice. He added, "this condition is directly related to her vocation and she should refrain from telephone sales until further notice."

While claimant testified that for perhaps eight of her 17 years as a reservation agent, she had worked "a lot of mandatory overtime," she agreed that in recent years overtime had not been required. She also stated that when an intercom was announcing something, she would have to speak "over" it. She said she has had to use a loud voice and she has to raise her voice at times at work, but does not have to shout. She works an eight-hour day and may rest in between calls. At times, she said, there is time between calls now.

(Ms. F) testified that she is a manager for employer. She has worked as a reservation agent also. She said that since the new microphones have been in use (June 1996) she has had no complaints from workers that they have to yell or shout into the phone, but acknowledged that she did have such complaints before that time. She also testified that more employees have been hired resulting in fewer calls per employee each hour on average. She too has had vocal cord nodules, for which she had surgery, but did not consider it to be a workers' compensation injury.

Another medical report in the record is that of (Dr. K), another otolaryngologist, who reviewed claimant's records for the carrier in August 1997. He agreed that the etiology of vocal nodules is "misuse or abuse" of the voice. He added, "normal prolonged speaking does not lead to vocal nodules." He also said that the job of reservation agent itself would "not be causally related to the production of vocal nodules or hemorrhagic changes." He went on to say that if a person has laryngitis and strains the voice during that time, "nodules may develop." Nodules may grow if there is "continued forcing of the voice" (again referring to straining the voice). He said that speech therapy is "integral" to therapy for nodules and concluded his opinion by saying claimant's "occupation may have exacerbated some nodules which were caused by straining her voice in some other manner."

The carrier calls attention to the absence in the history claimant gave to medical and allied personnel of information about the time she had between calls at work. We note, too, that Dr. K's report does not mention the need to raise one's voice as claimant testified, or the complaints of needing to shout, as Ms. F testified occurred prior to June 1996. The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She could determine the weight to give either medical report or the comments of YP based on a less than complete and accurate history or background provided to them. She could consider that Dr. K agreed with YP that abuse or misuse causes nodules. The various practitioners appear to disagree, or have been provided somewhat different facts, as to what strained claimant's voice. While the more recent change of equipment could be considered to have diminished the need to strain one's voice, claimant did point out that the sensitivity at times called for louder speaking. The hearing officer could also give some weight to the video of claimant's work area. The need to speak distinctly and cheerfully has not changed over the years according to claimant's testimony.

All the medical and allied opinions appear to agree, however, that claimant's nodules were not a result of a viral or sinus infection; all either indicated or inferred that such nodules result from misuse of one's voice. While YP indicates that laryngitis and sinus are "also" contributing, that very statement reinforces her statement of misuse as being causative because it states that the misuse contributes too. (In workers' compensation cases, there is no sole cause requirement.) Claimant's testimony that YP taught her how to breathe differently in speaking and how to talk in a monotone without "attacking" her words, does not affect this case since there is no concept of negligence on the worker's part in determining compensability in workers' compensation cases. While the hearing officer could have considered the evidence that any strain to claimant's voice since June 1996 would be reduced and could have questioned whether nodules appearing in March 1997 came from the work or from some other activity, there is evidence of having to speak louder and of possible straining in speaking during claimant's period of work.

The Appeals Panel will only overturn a hearing officer's determination of a factual issue when it is against the great weight and preponderance of the evidence. In Texas Workers' Compensation Appeal No. 92525, decided November 19, 1992, there were no nodules in question, only hoarseness. The author cited the fact that the claimant in that case only talked in a normal voice. The concurring opinion therein pointed out that hoarseness involved with normal speaking at work is an ordinary disease of life. The facts in this case provide some distinction from those comments. While the facts in this case do not mirror completely those in Texas Workers' Compensation Appeal No. 931149, decided February 4, 1994, because there is no evidence of recent speaking for 10 to 12 hours a day at work, there is similarity in the development of vocal cord nodules, as opposed to hoarseness, and the need to maintain a certain quality of speaking at work. The case under review does not require reversal because its facts do not contain all those present in Appeal No. 931149. The parties stipulated that if there is a compensable injury, the claimant's disability began March 25 and ended May 14, 1997.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Christopher L. Rhodes
Appeals Judge

Judy L. Stephens
Appeals Judge