

APPEAL NO. 980233
FILED MARCH 19, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 13, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. With respect to the issue before her, the hearing officer determined that the respondent (claimant) sustained an injury in the form of an occupational disease, occipital neuralgia, on or about _____. In its appeal, the appellant (carrier) asserts error in that determination, arguing that "the evidence here is clearly insufficient to take this case out of the category of ordinary disease of life to which the public is exposed outside of employment." In her response, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer's decision contains a fairly detailed statement of the evidence, which will not be repeated in this case. Rather, we will only briefly discuss the facts most relevant to our decision. The claimant is employed as a load planner for an airline. In order to perform her duties, the claimant is required to view two computer monitors, enter information by keyboard, retrieve information from a printer and use a track ball. She testified that at the work stations where she primarily works, the computer monitor is on a shelf over the telephone console. She stated that, as a result, the bottom of her computer screen is 10 inches from the top of her desk. She stated that she wears progressive trifocal lenses and that in order to see the information on the monitor through the middle section of her trifocals, she has to tilt her head back and arch her neck. She stated that she works from 10:00 p.m. to 6:00 a.m. and that she frequently works overtime. She testified that she spends 45 minutes of each hour looking at her computer monitor and that she tilts her head up and down approximately 40 times per hour. In addition, she stated that, in order to access other information that she needs to enter into the computer she must frequently move her head to one side and back to her computer.

On October 3, 1997, the claimant had an appointment with Dr. R, her primary care physician. Dr. R diagnosed occipital neuralgia and told the claimant that her occipital nerves were inflamed. The claimant testified that, after she described her work station to Dr. R, he opined that the probable cause of her problem was the movement of her head back to look at the computer screen, down to the desk and from side to side. In a "To Whom it May Concern" letter of October 29, 1997, Dr. R stated:

[Claimant] has recently developed occipital neuralgia secondary to the ergonomics of her work station. We have started treatment with Tegretol and Toradol since she has failed a moderate course of oral steroids.

Her prognosis is good if something can be done to rearrange her work environment so that she does not have to arch her head back in order to read what is on the monitor she must work with as well as place it directly in front of her face and body.

The hearing officer determined that the claimant sustained a compensable occupational disease injury. Under the 1989 Act, the term occupational disease includes repetitive trauma injuries, which are defined as "damage or harm to the physical structure of the body occurring as a result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." Section 401.011(36). The hearing officer determined that the claimant's work required her to engage in the repetitively traumatic activity of arching her neck backwards to see the computer screen and then bend forward to see the keyboard; that the claimant spent approximately 45 minutes of a typical work hour looking at the computer screen; that she moves her head up and down approximately 40 times per hour; and that her occipital neuralgia was a result of that repetitively traumatic activity.

The carrier argues that the claimant did not sustain a compensable repetitive trauma injury. Rather, it maintains that her condition is an ordinary disease of life that is not compensable under the 1989 Act. In its brief the carrier attempts to distinguish the case of Texas Workers' Compensation Commission Appeal No. 950549, decided May 19, 1995; however, we do not find its argument that this case is distinguishable from Appeal No. 950549 persuasive. In Appeal No. 950549, the Appeals Panel affirmed a hearing officer's determination that the claimant had sustained a compensable repetitive trauma injury, resulting from her data entry duties, which required repetitive head movements up and down and to the right and left. In affirming, Appeal No. 950549 emphasized that there was evidence that the claimant's injury resulted not from merely sitting but from constant repetitious motion of her head and back, noting that Texas case law has also recognized that having to move one's body into an awkward, attenuated position can constitute a traumatic activity. See Appeal No. 950549 for a discussion of relevant Court of Appeals cases. In this instance, as in Appeal No. 950549, there was evidence from which the hearing officer could determine that the claimant's work duties required her to engage in constant repetitious movement of her head. In addition, there was evidence from Dr. R stating that the arching of the claimant's neck so that she could read her computer screen had caused her occipital neuralgia. That evidence provides sufficient evidentiary support for the hearing officer's determination that the claimant sustained a compensable repetitive trauma injury. Nothing in our review of the evidence demonstrates that that determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for our reversing the hearing officer's decision on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Finally, we briefly consider the carrier's reliance on Texas Workers' Compensation Commission Appeal No. 92525, decided November 19, 1992. In Appeal No. 92525, the Appeals Panel reversed a determination that a telephone operator had sustained a compensable occupational disease injury to her voice, hoarseness, due to her extended periods of talking in a normal voice. The carrier's reliance on Appeal No. 92525 is misplaced because the distinguishing characteristic of that case was that the "evidence did not point to any unusual and special prevalence of disease-causing circumstances on the job." Texas Workers' Compensation Commission Appeal No. 931147, decided February 4, 1997. In this case, the claimant presented evidence, which the fact finder chose to credit, demonstrating that the claimant's job required her to perform continuous head movements, which were of a different character and number than the head movements performed by general public. Accordingly, Appeal No. 92525 is inapplicable and it does not, as the carrier argues, demonstrate that the hearing officer's decision and order should be reversed.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge