APPEAL NO. 980425

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 3, 1998, with a hearing officer. He (hearing officer) determined that the respondent (claimant) sustained a compensable bilateral carpal tunnel syndrome (BCTS) injury on, _____ and had resulting disability from March 26 through May 11, 1997, and from October 3, 1997, through the date of the CCH. The appellant (carrier) appeals, contending that, as a matter of law, the evidence was insufficient to support these determinations. It also requests that we delete certain findings of fact which did not address issues under this docket number. The appeals file contains no response from the claimant.

DECISION

Affirmed as reformed.

The CCH below was a consolidated hearing under three separate docket numbers, which considered three separate injuries on three different dates and claimed disability. Presumably, a separate, albeit identical, decision and order will be issued for each docket. In the case we now consider, the compensable injury issue for determination is only the claimed BCTS injury of (alleged injury date), which the hearing officer found occurred on _____. The hearing officer also made a finding of fact that the claimant sustained a compensable impact injury to the left hand on (injury date number one) (Finding of Fact No. 2); that the claimant sustained a repetitive trauma injury to the left index finger on (injury date number three) (Finding of Fact No. 10); and that the claimant's disability from October 3, 1997, was the result of both the _____, BCTS injury and the (injury date number three), left index finger injury (Finding of Fact No. 11). Because the claimed injuries of (injury date number one) and (injury date number three), were not before the hearing officer under this docket number, we reform the decision and order of the hearing officer by striking Findings of Fact No. 2 and 10. With our striking of Finding of Fact No. 10, the reference to the left index finger injury (stenosing tenosynovitis) in Finding of Fact No. 11, becomes essentially surplusage and can be disregarded for purposes of this opinion.

Although the precise nature of the claimant's work was not readily evident from the verbal description given at the CCH, he generally testified that his job on _____,[1] involved the repetitive use of his hands. He said he picked up crankshafts from an

[1]Although the issue as stated in the decision and order was whether the claimant sustained an injury on March 25, 1997, all the evidence pointed to a claimed injury on March 24, 1997, and the hearing officer so found. Prejudicial error resulting from this discrepancy has not been raised by either party and we assign none.

assembly line to perform work on them and estimated the crankshafts to weigh from five to 10 pounds and that he worked on 700 to 1,000 units per shift. According to the claimant, he went to the employer's dispensary complaining of hand pains on _____, and was referred to (Dr.H) the next day. Dr. H then referred the claimant to (Dr. C), a hand surgeon. Nerve conduction velocity tests were performed on October 8, 1997. (Dr. K), a neurologist, confirmed BCTS based on these tests. On October 20, 1997, Dr. C diagnosed BCTS. On November 25, 1997, Dr. H commented that the claimant's job put him "at significant risk" for carpal tunnel syndrome (CTS). On December 18, 1997, Dr. C wrote that he believed the claimant sustained a repetitive trauma injury "which certainly makes this a work-related type injury."

The carrier appeals the hearing officer's determination that the claimant sustained a compensable BCTS, primarily on the basis that causation of BCTS must be proved by expert medical evidence that meets the standards enunciated by the Texas Supreme Court in E. I. du Pont de Nemours & Co. v. Robinson, 923 S.W. 2d 549 (Tex. 1995) and Merrell Dow Pharmaceuticals v. Havner, 953 S.W. 2d 706 (Tex. 1997). However, in Texas Workers' Compensation Commission Appeal No. 961823, decided October 30, 1996, we stated that we did not agree with a carrier that "the occurrence of CTS requires expert medical evidence to prove causation" and that the hearing officer could properly consider medical evidence that diagnoses CTS, along with the claimant's description of the job duties, and conclude from this that the claimant's BCTS is a compensable repetitive trauma injury. *See also* Texas Workers' Compensation Commission Appeal No. 972181, decided December 4, 1997. *And see* Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993, for a discussion of cases where expert medical evidence is required.

In the case we now consider, the claimant testified to the repetitive nature of his work. Dr. H and Dr. C concluded that the claimant had BCTS based on nerve conduction studies. This evidence, we believe, was sufficient to support the finding of a compensable BCTS injury.

In reaching this conclusion, we do not perceive that the thrust of the appeal is that the nerve conduction study is inadequate as a matter of law under either Robinson, *supra*, or Havner, *supra*, but only that Dr. H's and Dr. C's opinions do not meet this test. In this regard, Texas Workers' Compensation Commission Appeal No. 971054, decided July 11, 1997 (Unpublished), pointed out that Robinson and Havner were based on Rule 702 of the Texas Rules of Civil Evidence and that pursuant to Section 410.165(a) conformity to such rules is not necessary. In addition, Section 410.165(b) directs the hearing officer to accept "all written reports signed by a health care provider." This latter provision must be reconciled with any attempt to apply Robinson and Havner to CCHs.

The carrier appeals the finding of disability on the basis that the injury was not compensable. *See* Section 410.011(16). Having affirmed the finding of a compensable injury, we also affirm the finding of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer as reformed.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge