APPEAL NO. 990107

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 3, 1998, a contested case hearing (CCH) was held. With respect to the issues before her, the hearing officer determined that the respondent (claimant) had sustained a compensable repetitive trauma injury on _____ (all dates are 1998 unless otherwise noted) and that he had disability from _____ through July 15th.

Appellant (carrier) appeals, contending that claimant had failed to establish causation within a reasonable medical probability, that "as a matter of law" claimant did not have a repetitive trauma injury, that claimant did not have disability, and that the hearing officer erred in denying carrier's request for a continuance and erred in admitting two of claimant's exhibits. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. Claimant responds, urging affirmance.

DECISION

Affirmed.

It was undisputed that claimant had been employed as a truck driver for 30 years, the last two years and nine months with this employer. Claimant testified at some length about his specific duties and demonstrated how his job requires cranking to lower or raise dollies (to"dolly up"). Claimant testified regarding the size of the steering wheel and efforts required to shift gears on the standard transmission (claimant said he shifts with his right hand and the injury is to the left). Employer's vice president submitted a statement about claimant's duties (which was admitted over carrier's objection) which stated:

> His primary area of responsibility is for local freight, on runs under 15 miles. This activity involves frequent gear shifting and frequent steering wheel input. In addition, this activity requires that the Transport Operator drop off a semi-trailer and reconnect to another, sometimes as often as 3 or 4 times per shift. This involves the cranking of a handle geared to the trailer's landing gear legs, as well as securing of the fifth wheel pin.

Claimant testified that he began to experience numbness and tingling in his left arm in November or December 1997 and went to the doctor on January 9th. Claimant first saw Dr. W, who diagnosed "Peripheral Neuropathy caused by Carpal Tunnel Syndrome [CTS] and Ulnar Entrapment," and commented "In my professional medical opinion, these conditions are potentially related to his profession as a truck driver. The repetitive motions required by his job can not only cause this condition, but can potentially cause continued aggravation of his symptoms." Dr. W apparently referred claimant to Dr. S, a neurologist. In a report dated August 10th, Dr. S commented:

> [Claimant] is a patient in this neurological office since _____ to present and carries the following diagnoses: Severe Bilateral Ulnar Tardy Palsy and Mild Bilateral [CTS]. These conditions can be brought about by repetitive movements of the hands and forearms such as wheel turning, prolonged flexion of the elbow joint, repetitive cranking and other activities related to truck driving. Hence, the patient's condition is deemed to be work related.

Claimant subsequently had surgery on May 22nd. Claimant said the surgery resolved his complaints and that he returned to work on July 15th. In evidence is an off-duty slip dated _____, taking claimant off work (no end date is given and the signature is illegible) and a "Disability Certificate" dated June 12th from a Dr. M, taking claimant off work from May 12th to June 16th, and releasing claimant to regular duty on June 16th. Claimant testified that he was unable to work from _____ through July 15th because of his injury. The employer's vice president wrote that claimant "was incapacitated and unable to perform assigned duties from _____ through July 15, 1998."

The hearing officer commented that claimant "appeared credible, and" found a repetitive trauma of "severe bilateral nerve entrapment and mild [CTS]," and disability from _____ through July 15th. Carrier challenges those findings by saying expert evidence is necessary in this case and attempts to quantify how much time claimant spends in each of his specific driving activities per day or per shift. Carrier contends that as "a matter of law" claimant's activities do not constitute a repetitive injury. The definition of occupational disease in Section 401.011(34) includes a repetitive trauma injury and repetitive trauma injury is defined in Section 401.011(36) as damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time. First, we decline to hold that whether or not the described activities constitute a repetitive trauma is a question of law. Rather, it is a question of fact. As we have frequently held, the hearing officer is the sole judge of the weight and credibility to be given the evidence and this is equally true as to medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer had the benefit of observing claimant's demonstrated activities and judging the credibility of whether those activities could cause the complained-of injury. Claimant's testimony is supported to some extent by the reports of Dr. W and Dr. S. Carrier also contends that Dr. W's and Dr. S's reports, quoted above, do not rise to a reasonable medical probability and are "not enough to establish a causal connection." Carrier cites Texas Workers' Compensation Commission Appeal No. 951431, decided October 5, 1995, as a case in point. Appeal No. 951431 involved a contention that certain repetitive activities caused spinal stenosis. That decision commented that the injured employee in that case "testified somewhat vaguely about his injury" and cited the doctor's opinions, generally, that heavy lifting could cause spinal stenosis. In that case, claimant's testimony was so vague that the "crux of the case . . . rests on medical evidence." The Appeals Panel, in that case, found the medical evidence lacking, reversed the hearing officer and rendered a decision that the causal connection between spinal stenosis and the employee's work had not been established. We distinguish that case from the instant case on its facts, noting that claimant in this case was very specific, and that claimant's testimony was supported by the medical evidence. We have further held that issues of injury and disability may be

established by claimant's testimony alone, citing Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.), if that testimony is believed by the hearing officer, as clearly it was in this case. While we have held that expert medical evidence may be necessary to establish the precise diagnosis of CTS, once established, that diagnosis, coupled with the claimant's testimony, if believed, can be sufficient to establish the job-related nature of the injury. Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992, citing Houston Independent School District v. Harrison, 744 S.W.2d 298 (Tex. App.-Houston [1st Dist.] 1987, no writ). *See also* Texas Workers' Compensation Commission Appeal No. 941077, decided September 26, 1994, and Texas Workers' Compensation Commission Appeal No. 92122, decided May 4, 1992.

Similarly, carrier contends that claimant's disability (as defined in Section 401.011(16)) was not proven by "medical documentation." The hearing officer could find disability based on claimant's testimony alone, but in this case is supported by the indefinite off-work slip dated _____, the employer's statement and the undisputed fact claimant had surgery on May 22nd as well as Dr. M's off-work slip for May 12th through June 16th. Carrier cites an Appeals Panel decision where the Appeals Panel affirmed a hearing officer's decision that claimant did not have disability beyond a certain date. That decision is certainly no authority for reversing the hearing officer's factual determination of disability.

Carrier alleges error because the hearing officer failed to grant carrier a continuance because carrier was unable to schedule any one of three doctors to testify at the CCH. As was pointed out at the CCH, carrier made no effort to obtain a medical report from one or more of those doctors and made no representation when, if ever, those doctors might become available. We review the hearing officer's refusal to grant a continuance on an abuse of discretion standard, that is, whether the hearing officer acted without reference to any guiding rules or principles. For the reasons stated, we conclude that carrier has failed to show the hearing officer abused her discretion in denying the continuance. Morrow v. H.E.B., 714 S.W.2d 297 (Tex. 1986).

Carrier also alleges error by the hearing officer in admitting two exhibits over carrier's objection of lack of timely exchange. In both instances, the hearing officer found good cause in that the information had only recently been obtained. We note that one of the exhibits was the employer's version of claimant's job description. As carrier notes, to obtain reversal of a decision based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was, in fact, an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Considering the record as a whole, even if there had been error in admitting the exhibits, there is no indication that the error, if any, was reasonably calculated to cause or probably did cause the rendition of an improper decision. The exhibits admitted consisted of general information taken off the internet and the employer's description of claimant's duties, which was cumulative of claimant's testimony.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Alan C. Ernst
Appeals Judge