

APPEAL NO. 990198

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 January 5, 1999. She (hearing officer) determined that the respondent (claimant) sustained an injury in the form of an occupational disease, bilateral carpal tunnel syndrome (BCTS), and that the injury "extends to and includes" the left shoulder and cervical spine, but not the right shoulder and thoracic spine; that the claimant timely reported the injury; and that the claimant had disability. The parties agreed that the date of the alleged injury was _____. The appellant (carrier) appeals the adverse findings, expressing its disagreement with them and urging that the decision is against the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed. The findings that the compensable injury did not include the right shoulder or thoracic spine have not been appealed and have become final. Section 410.169.

DECISION

Affirmed.

The claimant worked at a commercial bakery as a bread dough twister on an assembly line. The job involved twisting two pieces of dough together to form the bread loaf. Excess dough was thrown into containers or onto the floor. Normally, there was a "floor person" whose job it was to keep the floor clean and dispose of the excess dough. The claimant was assigned duties as a floor person for a period of weeks in January 1998. She described her injury on _____, as follows:

... the bins were overloaded with dough. They were full of dough. And I got down to cut it, and then I went to pick it up and I had to throw it over, and I caught a very sharp pain in my shoulder, and I just came up and dropped everything and just walked up to the front office.

Neither Ms. S nor Mr. H, both supervisors, were present in the office, so the claimant returned to work "still in pain." According to the claimant, she told Ms. S the following Monday that she hurt her shoulder picking up dough and she told Mr. H that she hurt her shoulder.

The claimant continued working and, she said, her fingers began to go numb. She saw Dr. P on February 3, 1998, who diagnosed "probable" CTS, prescribed a hand splint, and excused her from work until February 5, 1998. The claimant said she reported this information the next day to Ms S. The claimant began treatment with Dr. C, D.C., on April 14, 1998. Nerve conduction studies requested by Dr. C were consistent with left CTS, but clinical correlation was suggested. Dr. C diagnosed CTS (without indicating left, right, or bilateral), irritation to brachial plexus, cubital tunnel syndrome, lumbar displacement, and

lumbosacral radiculitis which he attributed to her "moving and twisting heavy dough all day" for approximately two weeks.

Ms. G, a coworker, testified that she was present on _____, with the claimant when she said she heard her say "ouch," observed her rubbing her left shoulder and arm and saying that "my hand hurts." She said she went with the claimant to see Ms. S the following Monday and witnessed the claimant tell Ms. S that her hand hurt, that she hurt herself "throwing dough," and that she could not do the job of floor person.

Mr. H, the shift supervisor, testified that the claimant never reported an injury to him. Ms. S, the project manager, testified that she first became aware on April 24, 1998, that the claimant was asserting a hand injury when she complained to her about not being able to pay her bills because of her time off from work. Ms. S further testified that the claimant never complained about injuring her shoulder or arms at work and Ms. S recalled no discussions with her about seeing a doctor. At the February meeting with the claimant, Ms. S said, the claimant told her that her hand was hurting, but did not say why. She also said she saw the claimant when she came to her office wearing a splint and that Ms. S then took her off twisting duty.

The hearing officer made the following findings of fact and conclusions of law which have been appealed by the carrier:

FINDINGS OF FACT

6. On _____, the Claimant threw some discarded dough into the storage container and injured her left shoulder and her neck.
7. As a result of twisting the dough, the Claimant developed [BCTS] which was diagnosed when she sought medical treatment for her left shoulder.

* * * *

9. The Claimant reported the injury to [Ms. S] within the thirty (30) days following _____.
10. The Claimant was unable to work because of the [BCTS], her left shoulder, and her neck, beginning April 14, 1998, through September 18, 1998, and beginning September 20, 1998, and continuing.

CONCLUSIONS OF LAW

3. The Claimant sustained a [sic] injury in the form of an occupational disease, [BCTS], and this injury extends to and includes her left

shoulder and cervical spine, but it does not extend to and include her right shoulder and thoracic spine.

* * * *

5. The Claimant reported an injury to the Employer on or before the thirtieth (30th) day following the injury.
6. The Claimant had disability. . . .

The carrier appeals the finding of a compensable injury on several grounds. First, carrier argues that because the claimant is claiming two separate injuries, that is, to the shoulder as a result of a single act of throwing dough and BCTS from the repetitive trauma of twisting dough, it was "inappropriate" to "lump them all together in this one case." Rather, it asserts, she should have been required to file separate claims for each theory of injury. The carrier cites no authority for this proposition. We have, however, noted in the past that CCH's are not governed by strict rules of pleading and that we may affirm a factual determination of a hearing officer on any theory reasonably supported by the evidence. See Texas Workers' Compensation Commission Appeal No. 971637, decided September 26, 1997, and Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991.

The benefit review conference (BRC) report reflects two distinct issues regarding the nature of the injury. One issue was simply: "Did the claimant sustain a compensable injury in the form of an occupational disease"?¹ The position of the claimant was that she developed BCTS, left shoulder and neck injuries from repetitive trauma.² The carrier's reported position was that there was no injury. Another reported issue was: "Assuming the claimant sustained a compensable injury, does the injury extend to and include both wrists, both shoulders and neck?" The claimant's position was that these injuries were always part of the original injury. The carrier's position was that the wrist and neck problems did not result from the compensable left shoulder injury, and, if there was an injury, it was limited to the left shoulder. At the suggestion of the hearing officer, the parties agreed to combine these two issues into one issue of whether there was a compensable injury in the nature of an occupational disease and, if so, what was the extent of the injury. Given this agreement in the formulation of an extent-of-injury issue, we find any error now asserted by the carrier as to proceeding under one claim to have been waived.

The carrier next states that the claimant elected to proceed under a repetitive trauma theory of liability for all her claimed injuries. It argues that Finding of Fact No. 6 was "contrary to the claim made by the claimant" since it is a finding based on discrete trauma "and must be thrown out." We do not agree. While Finding of Fact No. 6 may be

¹Included in the definition of occupational disease is a repetitive trauma injury. See Section 401.011(34).

²There were no responses to the BRC report.

interpreted as suggested by the carrier, we do not believe this interpretation is compelled. An equally plausible interpretation is that the dough-throwing incident on _____, was but one of many similar incidents of trauma which cumulatively led to the experience of pain and the injury. Thus, the finding can be reconciled with the claimant's theory of repetitive trauma and such an interpretation is reasonably supported by the evidence.

Finally, on the compensability question, the claimant argues that the evidence does not establish repetitive activities at work by the claimant and that she was required, but failed to produce, expert evidence of causation. It should be noted that only a diagnosis of CTS must be supported by expert evidence, not the causal connection between the injury and repetitive activities at work. See Texas Workers' Compensation Commission Appeal No. 941077, decided September 26, 1994. Causation of the other injuries could be established by the testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. There was little dispute in the evidence about the physical requirements of the claimant's job. A fair inference from this evidence was that the job involved repetitive trauma. Determinations of causation are questions of fact for the hearing officer to decide and are subject to reversal on appeal only if they are so against the great weight and preponderance of the evidence as to be clearly erroneous and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). In this case, the claimant attributed her injuries to her activities at work both as a dough twister and as a dough thrower. Dr. C expressed the same opinion. This evidence, deemed credible and persuasive by the hearing officer, was sufficient to support her determination of the nature, extent, and cause of the compensable injury in this case.

The carrier also appeals the finding of timely notice of the injuries to Ms. S, and challenges the credibility of the claimant's evidence. Whether, and if so when, a claimant reports a work-related injury are questions of fact for the hearing officer to decide. Ms. S and Mr. H denied being told by the claimant that she injured herself at work. The claimant testified that she told Ms. S she injured her shoulder. Ms. G testified that the claimant also told Ms. S that she had a hand injury. The carrier challenges the credibility of this evidence, pointing out that it had to be elicited or "prompted" through leading questions and that Ms. S and Mr. H were more credible. As noted above, credibility determinations are matters for the hearing officer. In this case, the testimony of the claimant and Ms. G was sufficient to support the finding of timely notice.

The carrier appeals the findings of disability, again challenging the existence of a compensable injury and the claimant's credibility. Whether disability exists is a question of fact for the hearing officer to decide and can be established by the testimony of the claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The carrier argues that the employer was willing to accommodate the claimant's physical restrictions and the claimant stopped working just because she did not like the job she was assigned. The claimant testified that she returned to work briefly and realized she could not continue because of her injuries. The claimant's

testimony is sufficient to support the finding of disability. 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.

Alan C. Ernst
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge