

APPEAL NO. 990210

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 14, 1998, a contested case hearing (CCH) was held. The issues concerned whether the appellant, who is the claimant, sustained an injury in the course and scope of employment on _____, and had disability therefrom. Also in issue was the scope of the alleged injury; that is, whether it extended to development of a ganglion cyst and carpal tunnel syndrome (CTS).

The hearing officer found that claimant did not injure her wrist or hand in the manner she claimed and that any cyst or CTS she had was not the result of the claimed injury. Because the claimant was found not to have a compensable injury, the hearing officer further held that any inability to obtain and retain wages was not "disability," as it did not result from a compensable injury.

The claimant has appealed, arguing that the great weight and preponderance of the evidence supported her claim for a work-related injury. The claimant disputes the hearing officer's observations that she had 10 prior workers' compensation injuries. The hearing officer's experience and fairness are personally taken to task in the appeal and a charge made that he took the claimant's race into consideration. The claimant contends that the doctor's recitation of the history of the accident is medical evidence that it occurred. The respondent (carrier) responds that there was little evidence to support the claimant's contention of injury and notes that there is nothing to support the personal allegations about the hearing officer's conduct. The carrier asks that the factual determinations of the hearing officer, supported by the evidence, be affirmed.

DECISION

Affirmed.

Claimant was employed by (employer) on _____, the date she contended that the back of her hand was struck by a patient's bed crank that she was turning. The claimant had just returned to light work on May 27, 1998, after being off work several months for a compensable back injury. She said as the crank hit her hand, she felt a shocking pain. Claimant first sought medical treatment at an emergency room on June 21, 1998, and then from Dr. Z on June 28, 1998. The claimant contended that she developed a ganglion cyst and then CTS from the blow.

The evidence indicated that since she was hired in late May 1997, she had two prior workers' compensation claims (undisputed) for back injuries for which she lost time, and had actually worked a little over four months. Claimant had been a "housewife" before going to work for the employer. She had a workers' compensation injury about 10 years earlier, before she had been a housewife. In the interim, the claimant agreed that she had been involved in several car accidents, caused by being hit by other persons, and had made insurance claims for those injuries. Claimant testified that she told the on-duty

charge nurse, Ms. M, about her injury the date it happened, but also stated that she did not wish to formally report the injury because she did not wish to miss work and felt it would go away. She said there was no bruise or lump at the time this occurred.

Claimant said she had a ganglion cyst removed two and one-half years before the contended accident. She denied she had previous problems with CTS. She agreed that due to her two prior claims, she knew that workers' compensation claims were to be filed with Ms. C.

Ms. M's signature appears at the bottom of an unsworn statement that says, "On _____, I [claimant's name] struck the back of my risk [sic] on a bed crank while letting the bed down and I did report it to my charge nurse [Ms. M] that night." An off-work statement signed by Dr. Z asserts that claimant was unable to work from June 21 through November 1998 (day not specified).

Dr. Z's July 15, 1998, report records the claimant's contention of how the accident happened. He notes a recurrent ganglion cyst and says that this "may" have been caused by injuring her wrist. Dr. Z stated that the other way this "could" be work related is aggravation through her work activities. On August 21, 1998, commenting upon whether the injury is compensable, Dr. Z noted that this was "indeed a difficult situation." He says it would be overstatement to say her condition was caused by her work, but states that if all is as claimant told him, her work activities would definitely be a contributing cause of her symptoms. Dr. Z also stated that he did not believe the conditions he saw were related to just one day, but arose over the period of time she worked. His understanding was based upon a belief that the claimant worked over the next 10 days lifting and carrying patients, following the _____, bumping incident, as indicated in a November 6, 1998, letter. Records introduced by the carrier showed that for the two-week pay period that ran from June 5th through June 18th, claimant worked a total of 45.77 hours. Dr. Z also noted that claimant could have had a preexisting, although subclinical, CTS that was aggravated. Claimant's own schedule showed that she was scheduled to work nine days within this period. She agreed that she had called in sick on some of her regularly scheduled workdays and there was no way to tell from her schedule which days those were.

The claimant agreed in cross-examination that her name had previously been Ms. G. The carrier introduced a prior insurance claims search result sheet showing that six claims (including the one in issue) were filed by a person with claimant's name and address, two more were filed by a Ms. G at claimant's address, and three were filed by a Ms. G at another address. Three of these were workers' compensation claims, one was a personal injury protection claim, and the rest were automobile claims.

A representative of the employer who was responsible for filing workers' compensation claims, Ms. C, testified that she was not aware until sometime after July 1, 1998, that claimant was contending a work-related injury. She said that she had previously been told by claimant that she was going to have an operation on her wrist, but that claimant did not tell her it was a work-related injury.

First of all, we find not a scintilla of support in the record for the contention that the hearing officer exhibited bias or prejudice in his conduct of the CCH or his decision against the claimant. His reference to 10 previous workers' compensation claims are, at most, indicative of the fact that he interpreted the claims sheet erroneously as showing only workers' compensation claims. However, the number of prior claims was not material to his assessment that there were some prior claims from which claimant could be said to be acquainted with the procedure, a fact about which claimant herself testified.

Second, we find the decision of the hearing officer supported sufficiently by the evidence. Dr. Z's reports do not unequivocally or strongly state that claimant's CTS and ganglion cyst are linked to the specific _____ incident. Dr. Z's opinion about a repetitive aggravation of some sort was based upon a history of claimant having worked over the next 10 days before the ganglion cyst was manifested, which was not factually the case. It therefore became the task of the finder of fact to weigh the events claimed as the genesis of injury against the nature and type of the injury. He could also consider that the claimant had only recently returned to work at the time of the contended injury. More than mere chronology is required to establish the link between an accident (or repetitive activities) at work and the development of a disease. The hearing officer was free in this case to consider the totality of facts and conclude that claimant's CTS and ganglion cyst occurred off the job and were not made worse by her work activities. Because the threshold requirement of a finding of compensable injury was not made in this case, there could be no compensable disability as defined in Section 401.011(16).

We cannot agree that the decision is so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust, and we affirm the hearing officer's decision.

Susan M. Kelley
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge