APPEAL NO. 990640

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 23, 1999. The issues at the CCH were: did the appellant (claimant) sustain a compensable injury, in the form of an occupational disease, on _____; did the claimant sustain disability, and if so, for what period(s); and did the Texas Workers' Compensation Commission (Commission) abuse its discretion in denying the claimant's request for a continuance. The hearing officer found that the Commission did not abuse its discretion in denying the claimant's request for a continuance, the claimant did not sustain a compensable injury, including a compensable injury in the form of an occupational disease on _____, and the claimant did not have disability beginning on June 19, 1998. The claimant appeals, urging that she sustained a compensable repetitive trauma injury and had disability. The claimant requests that the hearing officer's decision be reversed or in the alternative, remanded to a CCH. The respondent (carrier) responds that sufficient evidence supports the challenged determinations.

DECISION

Affirmed.

The claimant testified that she worked as a high voltage technician, testing rubber gloves for use by electricians. The claimant testified that she performed these duties for Employer from 1990-1993 and continuously from 1995-1998. The claimant stated that she worked 40 hours per week, seven and one-half hours per day. The claimant testified that her job duties required her to bend, lift and twist as she picked up bags of rubber gloves to be tested at each station. The claimant asserted that as a result of these repetitious and traumatic activities, she sustained a back injury on _____. The claimant testified that she has been unable to work from June 19, 1998, through the date of the CCH.

The claimant testified that her middle back began aching in October 1997 and she sought medical treatment with Dr. J, who treated her for a bladder infection. The claimant began treating with Dr. KO in November 1997 because of low back pain. Dr. KO treated the claimant for back pain from October 31, 1997, through May 20, 1998. The claimant testified that she never discussed the cause of her back pain with Dr. KO, but his treatment was not helping her pain, so she sought medical treatment with Dr. KA on _____. Dr. KA opined in a letter dated September 2, 1998, that the claimant's lower back problems were due to the repetitive bending and lifting of bags weighing 10 to 15 pounds over a period of time and that this resulted in osteoarthritis and a subluxation complex of the lumbar spine. On June 19, 1998, Dr. KA took the claimant off work. Dr. KA referred the claimant to Dr. S in July 1998. In a letter dated July 16, 1998, Dr. S stated that he felt the claimant's low back was injured at her work and that "she has the classic description of the back being injured at work and a progressive development of pain after that event." After an MRI was performed, Dr. S opined that the claimant had a mild disk bulge at T11-12 and L5-S1 and

would not require surgery. As of the date of the CCH, the claimant remained under the medical care of Dr. KA and Dr. S.

In October 1998, the Commission had the claimant examined by Dr. B for a required medical examination. The purpose for the examination was to render an opinion as to the cause of the claimant's low back complaints. Dr. B opined that the claimant's medical records do not support a correlation or causal relationship of the claimant's low back complaints with the claimant's employment with Employer. Dr. B also stated that the medical records indicate the claimant's low back complaints had been long- standing since October 31, 1997. The carrier had the claimant's medical records and Employer's videotape reviewed by Dr. C as a peer review. Dr. C concluded that the claimant was not injured from repetitive lifting.

An occupational disease is "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury . . . . The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). A repetitive trauma injury is "damage or harm to the physical structure of the body occurring as the 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). An employee must prove, by a preponderance of the evidence, the compensability of an occupational disease. Texas Workers' Compensation Commission Appeal No. 960582, decided May 2, 1996, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). "[O]ne must not only prove that recurring, physically traumatic activities occurred on the job, but must also prove that a causal link exists between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared to employment generally." Texas Workers' Compensation Commission Appeal No. 950868, decided July 13, 1995, citing Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist] 1985, writ ref'd n.r.e.).

The hearing officer determined that the claimant did not suffer damage or harm to the physical structure of her body as a result of repetitious physically traumatic activities and that the claimant's probative medical evidence did not establish a causal relationship between the claimant's employment and the claimed back injury. While we do not feel that expert medical testimony is required in this case, such requirement was not raised on appeal. In fact, the claimant's appeal urges that Dr. S's statements should qualify as the "necessary expert testimony." Of course, the hearing officer should always consider all of the evidence, including the medical evidence.

The claimant had the burden to prove that she sustained a compensable repetitive trauma injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer, as fact finder, may believe all, part, or none of the

testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). Based on the evidence presented, the hearing officer concluded that the claimant did not meet her burden of proving she sustained a compensable injury, including a compensable injury in the form of an occupational disease. It is up to the fact finder to determine what weight to give to the medical evidence. Even though the medical opinions of Dr. KA and Dr. S contradicted those of Dr. B and Dr. C regarding causation, it was the hearing officer's duty to determine what weight to give the medical evidence and resolve these differences of opinion. When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong 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). We find there was sufficient evidence to support the determination of the hearing officer that the claimant did not sustain a compensable injury, including a compensable injury in the form of an occupational disease.

The claimant appealed the hearing officer's finding of no disability. Disability is defined as Athe inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we find the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

_____
Dorian E. Ramirez
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge