

APPEAL NO. 990696

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 16, 1999, a contested case hearing (CCH) was held. We first note that there is a typographical error in the statement of the issues in the decision and order. After reviewing the record and benefit review conference report, we conclude that the issues were misstated on the first page of the decision and order, but that the hearing officer addressed the actual issues in this case. With respect to the issues that were actually before him, the hearing officer determined that respondent (claimant) sustained a compensable occupational disease carpal tunnel syndrome (CTS) injury "on" _____; that she timely reported her injury to her employer; and that she had disability from July 2, 1998, to the date of the CCH. The hearing officer determined that claimant's ganglion cyst is not a part of her compensable injury and that determination is not appealed. Appellant (carrier) appeals the determinations that claimant sustained a compensable injury, that she had disability, and that she timely reported her injury. Claimant did not file a cross-appeal. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order. In the decision and order, the hearing officer stated that the fourth issue regarding election of remedies was withdrawn by agreement. The hearing officer made a determination that there was no election of remedies, and this was not appealed.

DECISION

We affirm.

Carrier contends that the hearing officer erred in determining that claimant sustained a compensable occupational disease CTS injury. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he or she sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The 1989 Act defines "injury" as damage or harm to the physical structure of the body and a disease naturally resulting from the damage or harm. Section 401.011(26). The definition of "injury" includes occupational diseases. An "occupational disease" is defined as "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body," but 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).

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176

(Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that she worked as a hair stylist doing permanent waves and color, and cutting hair. She said her hands began to hurt, that she was diagnosed with a ganglion cyst, and that she knew it was a work-related condition in May 1997. Claimant said she told her supervisor, Ms. J, about the cyst and pain in late May 1997. Claimant said she knew at that time that her condition was work related. The hearing officer determined that the ganglion cyst is not a work-related injury, and claimant did not appeal that determination. Claimant said her wrists began to worsen and she went to the emergency room (ER) on _____, due to wrist pain. Claimant said she was told at that time that the pain could be from a cyst or it could be CTS. Claimant testified that, after her cyst removal surgery in August 1997, she was told she had CTS. Claimant said that after she went to the ER she told Ms. J about it the next day. When asked what she reported, claimant said she told employer that she had a hand that was hurting and that it was a work-related condition. Claimant said that before she had her surgery in August 1997, she thought she had a ganglion cyst only and that after her cyst-removal surgery, she found out that she had CTS. In an August 4, 1997, medical record, Dr. W stated that claimant had a ganglion cyst and right upper extremity neuralgia and that he referred her for EMG testing. In a December 22, 1998, letter, Dr. D stated that his findings are consistent with right CTS.

The hearing officer considered this issue and assigned whatever weight he deemed appropriate to the evidence before him, including the medical evidence. He could have chosen to believe or disbelieve any part of the evidence before him. Having reviewed the record in this case, we do not find the hearing officer's determination that claimant sustained a compensable CTS injury to be so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. For this reason, we will not substitute our judgment for that of the hearing officer. Cain, supra.

Carrier contends the hearing officer erred in determining that claimant timely reported her CTS injury to her employer. Generally, a claimant must report an occupational disease injury to his or her employer within 30 days of the date the employee knew or should have known of the condition and that it was work related. Section 409.001(a)(2).

Carrier's assertion on appeal is that claimant was inconsistent in her testimony and that she was not credible when she testified that she timely reported her injury to her employer. The hearing officer apparently determined that claimant knew or should have known that her injury was work related on _____, and that she reported the injury within 30 days. The hearing officer judged the credibility of the evidence and we will not substitute our judgment for his. After a review of the evidence in the record, we conclude that this determination is not against the great weight and preponderance of the evidence, and we decline to overturn it on appeal. Cain. Carrier asserts that employer was never told of claimant's diagnosis of CTS. However, to fulfill the purpose of the notice provision, the employer need only know the general nature of the injury and the fact that it is job related. Texas Workers' Compensation Commission Appeal No. 93907, decided November 19,

1993. The hearing officer could find that the notice claimant gave to her employer was adequate to inform her supervisors that there was a work related wrist injury.

Carrier contends the hearing officer erred in determining that claimant had disability from July 2, 1998, to the date of the CCH. Carrier asserts that claimant recovered after the cyst-removal surgery, that, except for a few days, she was able to work until she was terminated from her job in January 1998, and that she did not seek medical treatment for CTS while working for employer before she was terminated. Carrier asserts that claimant's CTS claim is a claim made to retaliate against her employer. Carrier also contends that Dr. M was an advocate for claimant and that her medical reports are not credible. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). In a July 2, 1998, report, Dr. M stated that claimant had likely developed CTS, that she is restricted from "repetitive motion of the right upper extremity," and indicated that she is working with her regarding her "ability to return to work." Claimant said that, after her cyst-removal surgery, she worked only light duty and that she was unable to do her full duties after that time until she was terminated. Claimant testified that Dr. M took her off work in May 1998 and that she has not been released to return to work. Claimant said her wrist still hurts and "never got better," and said she has been told that she requires surgery for her CTS. We have reviewed the hearing officer's disability determination and we conclude that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge