

APPEAL NO. 990776

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 4, 1999, a contested case hearing (CCH) was held. He determined that the respondent (claimant) sustained a compensable injury, that the date of injury was _____, that she timely reported her injury, and that she had disability. Appellant (carrier) appeals these determinations on sufficiency grounds. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer's determination that claimant sustained a compensable injury is not supported by sufficient evidence. Carrier asserts that claimant did not provide details about her work activities and did not prove that her work involve repetitive tasks.

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 or infection 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).

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 cook for over nine years. She said her wrists began to bother her in 1997 and that she began to have pain in her arm in 1998. Claimant said the pain became severe in the summer of 1998, so she made an appointment with a doctor. Claimant said that on _____, she found out for the first time that her problems were work related when Dr. T told her that the condition was caused by repetitive-type work. Claimant said her injury includes her entire right upper extremity up to her neck area. She said she the doctor diagnosed bilateral carpal tunnel syndrome (CTS), worse on the right. Claimant testified that she has not had EMG testing because of the dispute of the

claim. Claimant's coworker testified that she told him her hands were hurting while she was cutting up food. He said claimant did not tell him why her hands were hurting.

In an August 7, 1998, report, Dr. T stated that claimant told her she has to chop and prepare food, that she has been having wrist and elbow pain, and that she had a positive Phalen's test. Dr. T also indicated that claimant's diagnoses are CTS, neuritis, cervical radiculopathy, and that she has ordered EMG testing. In an August 7, 1998, medical report, Dr. T stated that claimant has bilateral CTS and that, in her opinion, claimant's injuries are a "direct result of the cooking job she was performing." Dr. T noted that there was no specific trauma, but that CTS is an injury "which occurs with repetitive motion." In her transcribed oral statement, claimant stated that she gave Dr. T a copy of her job description.

In this case, the hearing officer resolved any conflicts in the evidence and determined that claimant sustained a compensable injury in the form of CTS, neuritis/neuralgia, and cervical radiculopathy. We will not substitute our judgment for the hearing officer's because his determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra. Regarding whether claimant proved that she engaged in repetitive work activities, this issue was for the hearing officer to consider in deciding this case. Dr. T stated that she discussed claimant's work duties with claimant and that she diagnosed CTS caused by repetitive motion from her cooking job. Claimant said she gave a copy of her job description to Dr. T. From the evidence, the hearing officer could have believed that claimant's work involved repetitive hand movements.

Carrier next challenges the disability determination on the ground that claimant did not sustain a compensable injury. We have already affirmed the hearing officer's determination that claimant sustained a compensable injury. Therefore, we reject carrier's challenge to the disability determination.

Carrier next contends that the hearing officer erred in determining that claimant timely reported her injury to employer. Carrier does not challenge the determination that claimant reported her work-related injury on August 13, 1998. Carrier asserts that the hearing officer erred in determining that the date that claimant knew or should have known that her injury was work related was _____. In her transcribed statement, claimant said that when she began to experience arm and hand pain, she had originally believed she might have arthritis. She testified that she went to the doctor on _____, and that Dr. T told her that her condition was work related. Claimant said she did not think her condition was work related before that time. Claimant said she then reported her work related injury to her employer the next day, July 30, 1998. An Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) dated August 13, 1998, is contained in the record. The hearing officer determined that claimant reported her injury on August 13, 1998.

Generally, a claimant must report an occupational disease injury to her employer within 30 days of the date she knew or should have known that the injury was work related.

Section 408.007; Section 409.001. The hearing officer was the sole judge of the witnesses' credibility and decided that claimant was credible in her testimony regarding when she knew or should have known that her condition was work related. We will not substitute our judgment for the hearing officer's because his determinations regarding the date of injury and timely reporting are 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 L. Stephens
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge