

APPEAL NO. 990796

On March 19, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the CCH were: (1) whether appellant (claimant) sustained a compensable occupational disease to her right wrist/hand in the form of carpal tunnel syndrome (CTS) on _____; (2) whether claimant had disability from August 5, 1998, to date and continuing as a result of the compensable injury of _____; (3) whether claimant notified the employer within 30 days of the date of injury, _____; (4) whether claimant sustained disability as a result of her compensable right thumb injury of (alleged date of injury); and (5) whether employer tendered a bona fide job offer to claimant. Claimant requests reversal of the hearing officer's decision that: (1) claimant did not sustain a compensable occupational disease to her right wrist/hand in the form of CTS on _____; (2) because claimant did not sustain a compensable injury, claimant did not have disability; (3) claimant did not notify employer within 30 days of the date of injury; (4) claimant did not sustain disability as a result of her compensable right thumb injury of (alleged date of injury); and (5) employer made a bona fide job offer to claimant. No response was received from the carrier.

DECISION

Affirmed.

Claimant began working in the employer's wholesale warehouse in 1995. Her job involved a variety of duties, including price-tagging, removing merchandise from bins that she takes off of a conveyer belt, stocking, counter work, and customer service. Claimant went to Dr. K in May 1998 complaining of right arm pain and told him that her pain increases when lifting bins at work. Dr. K referred claimant to Dr. J for electrodiagnostic testing of her right upper extremity in May 1998 and Dr. J reported that claimant's testing was consistent with CTS. Claimant said that on June 7, 1998, Dr. K told her that she had CTS due to the work she does. Claimant said that on _____, she reported to her supervisor, RN, that Dr. K had told her that she has work-related CTS. RN testified that claimant had been working with a brace on her wrist and that she knew claimant was seeing a doctor, but that claimant never told her that she had CTS as a result of her work. RN also testified that claimant does not do the same type of work all day long and that claimant's job duties change throughout the day. CB, an assistant manager for the employer, also testified that claimant wore a wrist brace at work but that claimant never told her that she had CTS that resulted from the work she did for employer. CB also said that no employee is assigned to work the conveyer belt all day long and that employees are rotated to that job. Claimant continued to see Dr. K and he wrote in July 1998 that claimant has right CTS.

It is undisputed that on (alleged date of injury), claimant injured her right thumb while removing a broom that was stuck on the conveyer belt at work. CB took claimant to see Dr. H on that day. Dr. H diagnosed claimant as having a laceration of the left thumb and a

superficial skin avulsion of the right thumb (Dr. H may have meant to reference a laceration to the right thumb). Dr. H released claimant to return to work with restrictions of no use of her right thumb and limited use of her right hand. Claimant said that after seeing Dr. H on August 4th, she returned to work and told RN that she was going home to rest. Claimant said Dr. H treated her for her thumb injury of August 4th and she saw him again on August 6th and 10th. Claimant said that Dr. H told her not to work but his reports of August 6th and 10th note that he was allowing claimant to return to work with the same restrictions he noted on August 4th.

In a letter to claimant dated August 17, 1998, employer noted that Dr. H had said that claimant could return to work with restrictions on use of her thumb; that, in accordance with those restrictions, employer had identified an alternative job for claimant involving customer service work that had the same hours and wage as her regular job; and that the alternative job was being offered to claimant. Claimant said that she received that letter on August 18, 1998, and that on August 18th she told CB that she would return to work when the swelling in her hand and thumb went down. Claimant has not returned to work. RN said that after Dr. H released claimant to return to work with restrictions, claimant told her that she was unable to even comb her hair and that she was going back to the doctor.

On September 4, 1998, claimant underwent a right carpal tunnel release performed by Dr. K and Dr. K also gave claimant a cortisone injection in her right thumb. On September 15, 1998, Dr. K wrote that claimant's sutures from her surgery were removed, that her right thumb was swollen, and that claimant was to remain off work. On September 6, 1998, claimant had an MRI done on her right thumb and the radiologist reported that the MRI showed osteoarthritic changes, tendinosis, fluid increase within the tendon sheath, mild thickening of ligaments, and no evidence of acute fracture or trabecular injury. On October 15, 1998, Dr. K gave claimant another cortisone injection in her right thumb. On October 26, 1998, Dr. K wrote that claimant's work entails lifting heavy bins of merchandise and that in his opinion her CTS is related to the repetitive use of her hands and should be considered as a work injury. On January 11, 1998, Dr. K wrote that claimant performs repetitive lifting throughout the day at work and that her CTS is related to her job. He also wrote that claimant has been diagnosed as having right thumb interphalangeal joint synovitis and flexor pollicis longus tendinitis, that claimant had been off work since her CTS surgery, that the CTS is work related, and that claimant's inability to work should be considered work related.

With regard to the CTS claim, claimant had the burden to prove that she was injured in the course and scope of her employment, that she gave timely notice of injury to her employer, and that she had disability as defined in Section 401.011(16). The hearing officer determined that claimant did not sustain right wrist/hand CTS as a result of performing repetitive job duties for employer, that claimant did not sustain a compensable occupational disease to her right wrist/hand in the form of CTS, that claimant did not notify the employer within 30 days of the date of injury, that claimant did not have good cause for not timely reporting the CTS injury to employer, and that, since claimant's CTS is not compensable, she did not have disability as defined by the 1989 Act from that condition.

With regard to the (alleged date of injury), compensable right thumb injury, claimant had the burden to prove that she had disability from that injury as defined by the 1989 Act. The hearing officer determined that claimant did not sustain disability as a result of that compensable injury. The hearing officer also found that employer made a bona fide job offer to claimant, which claimant received on August 18, 1998. Claimant asserts that, although she did not return to work, she did not refuse the bona fide job offer. The hearing officer found that she did not return to work. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge