APPEAL NO. 990893

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 April 5, 1999. He (hearing officer) determined that the respondent (claimant) sustained a compensable occupational disease of right carpal tunnel syndrome (CTS); that the date of injury was _____; that the claimant had good cause for her failure to timely report the injury; that the appellant (carrier) timely disputed the compensability of the injury; and that the claimant had disability from January 7, 1999, through the date of the CCH. An issue of average weekly wage was resolved by agreement of the parties. The carrier appeals the findings of a compensable injury, good cause for not timely reporting the injury, and disability, contending that these determinations are against the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed. The finding of a timely dispute by the carrier has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant worked for the employer in various jobs, one of which involved pulling "flash," formed in the welding process, from the inside of pipes. She described the job as essentially involving reaching inside the pipe with her right hand and snapping off the "flash." According to her testimony, this involved between 500 and 1,000 pipe joints a day. She first began doing this job on a regular basis in August 1997. She was in layoff status from June 28 to July 7, 1998; from August 23 to October 4, 1998; and from November 22 to December 7, 1998. In a transcribed statement, she said she first experienced pain in her right hand in June or July 1998, and associated this with pulling "flash". She testified that she "really" felt the pain on (alleged date of injury), but was able to finish her shift that day. In her written statement, she said she had severe pain on the night of (alleged date of injury), when pulling on an emergency brake in her husband's car, but in her testimony she said the emergency brake incident was not until the next day. She was off work because of babysitting problems on October 24, 1998, and said she went to the employer's clinic on October 25, 1998, to report her right hand injury. Clinic records, date stamped as received by the carrier on October 27, 1998, reflected a complaint of "slight swelling poss. strain to muscle in rt. thumb. It seems to have strained pulling flash." She did not work on October 26, 1998, and took personal leave from October 27 to November 4, 1998. The claimant worked light duty after her return from a layoff on December 7, 1998, and continued working until January 7, 1998, when, she said, she was placed in a restrictive layoff status, which, she said, applied to her because her physical limitations were considered by the employer not to be work-related and light duty was made available only to those with work-related injuries. She has not returned to work since January 7, 1999. EMG testing on December 2, 1998, revealed "minimal right carpal tunnel."

The claimant had the burden of proof on the appealed issues. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). An occupational disease is one which arises out of and in the course of employment and does not include an ordinary disease of life to which the general public is exposed outside of employment. Section 401.011(34). Included in the definition of an occupational disease is a repetitive trauma injury that is 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). See Texas Workers' Compensation Commission Appeal No. 94941, decided August 25, 1994. The hearing officer considered the evidence and concluded that the claimant met her burden of proving repetitious traumatic activity at work caused her right CTS. The carrier appeals this determination, noting that no doctor has given an opinion that the claimant's work activities caused the right CTS. It also urges that we reconsider our decisions which hold that a diagnosis of CTS must be supported by expert evidence, but that the work-related cause of the condition (generally pain, numbness, and swelling) can be established by the testimony of the claimant alone. *See, e.g.,* Texas Workers' Compensation Commission Appeal No. 941077, decided September 26, 1994. We decline to reconsider this position, but reaffirm that the injury, but not the diagnosis, may be established by the claimant's testimony if found credible. The carrier also argues that the claimant did not establish that her activities were repetitive enough or beyond that experienced by the general public outside of employment to establish a repetitive trauma injury. Whether the claimant's activities were sufficiently repetitive and related to her employment were questions of fact for the hearing officer to decide. The safety manager agreed with the claimant that she would typically remove "flash" from 500 to 1,000 pipes per day. There was no dispute that this involved reaching inside the pipe and breaking off the "flash." Even though, as the safety manager testified, no one else may have developed a similar problem and he did not believe the claimant's work caused her right CTS, this does not preclude a finding in the claimant's favor on the issue of an occupational disease. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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). The hearing officer found the claimant credible in her description of the nature and volume of work she did and concluded this constituted sufficiently repetitive trauma beyond that experienced by the general public outside of employment. In doing so, he obviously did not credit the testimony about pulling the emergency brake as the cause, or at least sole cause, of the right CTS. These are reasonable inferences from the evidence presented and, under our standard of review,we decline to reverse the finding of an occupational disease.

The claimant contended that her date of injury was (alleged date of injury). The hearing officer found a date of injury of _____, based on the claimant's testimony and recorded interview. The claimant has not appealed this date, although, given the finding that notice was given to the employer on October 25, 1998, had argued at the CCH that her date of injury was (alleged date of injury). We do not construe the carrier to be appealing this finding of a date of injury, but only of the related finding that the claimant had good cause for not reporting within the statutory standard of 30 days from the date of injury.

Section 409.001. The hearing officer found good cause based on trivialization of the injury until the night of (alleged date of injury), when the claimant said she suffered real pain and then reported it on October 25, 1998. Good cause, generally, is defined as whether the claimant has exercised the degree of diligence of an ordinarily prudent person in prosecuting a claim. Texas Workers' Compensation Commission Appeal No. 92075, decided April 7, 1992. Trivialization of an injury, that is, a bona fide belief that the injury is not serious is commonly considered good cause for a delay in reporting. Texas Workers' Compensation Commission Appeal No. 91066, decided December 4, 1991. Generally, good cause must extend more or less up to the time the notice is given, and, as the carrier vividly points out in its appeal, whether good cause exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93677, decided September 21, 1993. We find no basis under our standard of review to reverse the finding of good cause, and the carrier arguably brings forward only the argument that the claimant is unworthy of belief in her assertion of trivialization. Her credibility is a matter for the hearing officer to decide. Section 410.165(a). We do not believe this finding is inconsistent with the initial claimed date of injury of (alleged date of injury), but, arguably, the finding of trivialization is supported by an argument for a later date of injury. The carrier does not expressly contend that the claimant's good cause dissolved when she did not report it on October 24, 1998, but waited until October 25, 1998. The claimant testified to babysitting problems on October 24, 1998. Such problems could properly be considered by the hearing officer in finding good cause extended one more day to the date of notice. Under our standard of review, we find the evidence sufficient and affirm the date of injury and good cause for failure to give timely notice determinations.

Finally, the carrier appeals the disability determination, contending that on January 7, 1999, the claimant was simply laid off with other coworkers, independent of her injury. The claimant testified that she was in a separate category of layoff and not entitled to return to light duty. In evidence was a treating doctor's report of December 16, 1998, placing the claimant in a light-duty work status. This document, together with the claimant's testimony, provided sufficient evidence to support the finding of disability. Even if the layoff played some role in the claimant's not working, the compensable injury need not be the only cause of the disability. Rather, it is sufficient that the compensable injury is producing cause of the disability. Texas Workers' Compensation Commission Appeal No. 931117, decided January 21, 1994.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Robert W. Potts
Appeals Judge