

APPEAL NO. 991189

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 6, 1999, a consolidated contested case hearing (CCH) was held. With regarding to claim file (Docket No. 1), the hearing officer determined that: (1) respondent (claimant) sustained repetitive trauma injury to her wrists; (2) the date of injury was (date of injury for Docket No. 1); (3) claimant timely reported the injury on January 9, 1998; and (4) claimant had disability from January 15, 1998, to August 11, 1998. With regard to claim file (Docket No. 2), the hearing officer determined that: (1) claimant sustained a specific injury to her hands, right knee, and right hip when she fell at work on (Docket No. 2); and (2) claimant had disability from January 15, 1998, to August 11, 1998. Appellant (carrier) appeals these determinations regarding both claims on sufficiency grounds. The file does not contain a response from claimant.

DECISION

We affirm.

Regarding claim file (Docket No. 1) and the occupational disease repetitive trauma claim, carrier first contends that hearing officer's determination that claimant sustained a compensable bilateral carpal tunnel syndrome (CTS) injury is not supported by sufficient evidence. Carrier asserts that: (1) the EMG and medical evidence does not show that claimant had CTS or an injury to her wrists; and (2) the medical evidence and testimony does not show that claimant's activities at work involved repetitive work.

The applicable law and our appellate standard of review are stated in Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Section 401.011(26); Section 401.011(34); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992; Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); and Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The hearing officer determined that claimant sustained a bilateral repetitive trauma injury. Claimant testified that she was doing repetitive-type activities at work and that she began experiencing pain in her forearms and hands. In an April 15, 1999, letter, Dr. SW stated that claimant's normal EMG findings did not mean that she did not have CTS. Dr. SW stated that EMG testing may confirm CTS but that a normal EMG does not rule out CTS. He said that his final conclusion is that claimant "suffered a [CTS] with secondary causalgia secondary to repetitive motion trauma manifesting itself on (date of injury for Docket No. 1), and exacerbated by her fall on (Docket No. 2)." The hearing officer resolved the conflicts in the evidence and determined that claimant sustained a compensable repetitive trauma injury to her wrists. 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*.

Carrier next contends that the hearing officer erred in determining that the date of injury for the CTS injury is (date of injury for Docket No. 1), and that claimant timely reported the CTS injury by reporting it on January 9, 1998. Carrier asserts that the evidence shows that claimant knew or should have known that her pain in her wrists was related to her work activities as early as November 1997. Claimant said she began working for employer in October 1997 and that she had not been working outside the home before that time. She said she was having pain from grinding and using snips at work in October, November, and December 1997. She said she thought she had some soreness and that she would get used to the work. Claimant said that she realized that she was hurt and not just sore on (date of injury for Docket No. 1). She testified that she reported her injury to Mr. M on January 9, 1998, because she knew she needed to get medical treatment for her injury.

Generally, a claimant must report an occupational disease injury to his employer within 30 days of the date he knew or should have known that the injury may be work related. Section 408.007; Section 409.001. The hearing officer was the sole judge of the witnesses' credibility and obviously decided that claimant was credible in her testimony regarding the (date of injury for Docket No. 1), date of injury. Claimant's testimony that she reported both injuries on January 9, 1998, supports the hearing officer's determination that claimant timely reported her CTS injury within the required 30 day period. We will not substitute our judgment for the hearing officer's because his determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Carrier next challenges the sufficiency of the evidence to support the hearing officer's disability determination. We note that the disability determination applies to both claims. Carrier asserts that claimant did not have disability because she did not sustain a compensable injury. Carrier also contends that claimant was not credible regarding her testimony because her symptoms seemed to increase when she was off work. Carrier complains that there was a gap in the medical treatment given to claimant. We apply the Cain standard of review to this challenge. The hearing officer determined that claimant had disability from January 15, 1998, through August 11, 1998, regarding both compensable injuries. Claimant said that she went to see the company doctor, Dr. C, who took her off work. A January 15, 1998, Initial Medical Report (TWCC-61) from Dr. C states that claimant may return to limited work on January 15, 1998. Claimant said that her employer requested that claimant be released to very light work, which was why Dr. C permitted her to go back to work. She said she was given light-duty cleaning work for a few days, and then her employment was terminated due to a lay off on January 15, 1998. A slip from Dr. SW states that claimant may return to work on August 11, 1998. From this evidence, the hearing officer could determine that claimant had continuing work restrictions for the disability period found by the hearing officer. We will not substitute our judgment for the hearing officer's because his disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Regarding claim number (Docket No. 2), carrier contends the hearing officer erred in determining that claimant sustained a compensable injury to her wrists, knee, and hip in a fall on (Docket No. 2). Carrier asserts that any incident that may have happened was insignificant and that she did not injure her body. Claimant testified that she did slip and fall on her hands and knees and onto her right hip on (Docket No. 2). She said she injured her hands, arms, knees, right hip, neck, and back. Claimant said she had a bruise on her right knee after the fall. In a handwritten statement, one of claimant's coworkers said he heard the fall and saw claimant get up. Claimant said she initially saw Dr. C and that she sought treatment with Dr. ST for her back and hip pain. Medical records from Dr. ST show that claimant indicated that she was experiencing pain in her right hip and back, as well as other areas, and that she was treated with chiropractic treatments. Dr. C's January 15, 1998, TWCC-61 noted pain and swelling in claimant's right knee and that an x-ray was performed. He also diagnosed a contusion to claimant's hands. Dr. SW stated in April 1999 that claimant's wrist condition was exacerbated by her (Docket No. 2), fall. From this evidence, the hearing officer could determine that claimant sustained a compensable injury to her hands, right knee, and right hip on (Docket No. 2). We conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Regarding disability and the (Docket No. 2), specific injury, Dr. ST's records indicate that she treated claimant for the (Docket No. 2), injury. In a January 15, 1998, off-work slip, Dr. ST stated that claimant should not return to work "at this time." Again, there was evidence that claimant's hand and wrist injury was exacerbated by the (Docket No. 2), injury and that she was off work until August 11, 1998, for that injury. The hearing officer considered whether there was a "gap" in claimant's treatment and whether there was evidence that she had disability. We perceive no error in the disability determination in this case.

Carrier complains generally that claimant was inconsistent in her testimony and that she was not a credible witness. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We will not substitute our judgment for his in that regard.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Dorian E. Ramirez
Appeals Judge