APPEAL NO. 991213

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 March 24, 1999. With respect to the sole issue before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease. The claimant appeals, urging he did sustain an occupational disease caused by his employment duties and there is overwhelming medical to support an injury, and he requests that the decision be reversed. The respondent (carrier) filed an untimely response.

DECISION

Affirmed.

Addressing the untimely response by the carrier, the carrier states in its response that it received the claimant's request on June 4, 1999. Section 410.202 and Rule 143.3(c) provide that a response is timely if it is filed on or before the 15th day after the date of receipt of the appellant's request and received by the Commission not later than the 20th day after the date of receipt. In this instance, the 15th day after the date of receipt was Saturday, June 19, 1999, and the 20th day fell on Thursday, June 24, 1999. The carrier's response was postmarked June 18, 1999, and stamped as being received by the Commission on June 28, 1999. The envelope indicates the zip code of addressee is partially missing and there is a handwritten notation with the correct zip code. Because the response was not timely filed, it will not be considered.

The claimant testified that he sustained an occupational disease, left carpal tunnel syndrome (CTS), as a result of working as a barbershop inspector for 36 years. According to the claimant, his job was to inspect barbershops along Highway 10, from City 1 to City 2, for compliance with the law. The claimant testified that he worked 40 hours a week and inspected from between 5 and 23 shops per day. According to the claimant, his left CTS was caused by driving, opening the door to his car, and holding his clipboard with his left hand while he was writing with his right hand. The claimant testified that he used a computer occasionally, maybe once or twice a month to enter numbers.

The medical records indicate that on October 9, 1998, the claimant sought medical treatment with Dr. P. Dr. P's history states the claimant "does repetitive activities with the left hand on a computer and extensive writing" and his impression was advanced CTS. The claimant had EMG and NCV testing which confirmed claimant has left CTS and cubital tunnel syndrome. On February 15, 1999, Dr. P stated:

> The activities he performed as a (Employer) where he did a moderate amount of repetitive activity has clearly contributed to his symptoms of [CTS]. While it is apparent that all symptoms are not from his work and not directly caused by his work because of the associated diabetes and lepomatous

> neurology; however, it is also apparent that the kind of work he does has been a significant aggravating factor contributing to the development of the symptoms and in fact the examination today reveals that his left hand is significantly more involved.

On March 24, 1999, Dr. P wrote a letter indicating that he would estimate that 30-50% of the claimant's symptoms are a result of the workers' compensation problem with his hand.

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 overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

An occupational disease is "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. . . . The term 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). A repetitive trauma injury is "damage or harm to the physical structure of the body occurring as 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). The Appeals Panel has stated that to recover for such an injury one must prove not only that repetitious, traumatic activities occurred on the job but also that a causal link existed between such activities and the incapacity, that is, "the disease must be inherent in that type of employment as compared with employment generally." Texas Workers' Compensation Commission Appeal No. 92272, decided August 6, 1992. The Appeals Panel has further stated that a claim for repetitive motion injury should be supported by evidence of the extent and nature of the work performed and some description of the repetitive activities that would affect the employee in a way not common to the general population. *See, e.g.*, Texas Workers' Compensation Commission Appeal No. 950202, decided March 23, 1995.

The claimant had the burden to prove that he sustained an occupational disease, left CTS. Whether he did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Although a diagnosis of CTS must be based on expert medical evidence, we have routinely held that the cause of CTS can be established by the testimony of the claimant alone if found credible by the hearing officer. *See*, *e.g.*, Texas Workers' Compensation Commission Appeal No. 961008, decided July 1, 1996; Texas Workers' Compensation Commission Appeal No. 941077, decided September 26, 1994; and Houston Independent School District v. Harrison, 744 S.W.2d 298 (Tex. App.- Houston [1st Dist.] 1987, no writ). The hearing officer is, nonetheless, allowed to consider medical evidence along with a claimant's description of work duties in determining whether causation has been proved.

As noted by the hearing officer in the Statement of the Evidence, Dr. P's records indicate the claimant gave a history of repetitive activities on a computer and extensive writing, yet the claimant's testimony was that his repetitive activities consisted of driving, opening the door to his car, and holding his clipboard with his left hand while he was writing with his right hand. A fact finder is not bound by medical evidence when that evidence is manifestly dependent upon the credibility of the information given by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). We find there was sufficient evidence to support the hearing officer's determination that the claimant did not sustain an injury in the form of an occupational disease on (alleged date of injury).

The claimant notes in his appeal that the hearing officer's decision indicates it was issued on April 20, 1999, yet his hearing was not held until May 20, 1999. It appearing that the month was a clerical error; we reform the decision and order to reflect that the decision was issued on May 20, 1999.

The decision and order of the hearing officer are affirmed.

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Dorian E. Ramirez
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Judy L. Stephens
Appeals Judge