

APPEAL NO. 991722

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 13, 1999, a contested case hearing (CCH) was held. The issues disputed at the CCH were whether the respondent, Annie Freddie, who is the claimant, sustained a repetitive trauma injury in the form of bilateral carpal tunnel syndrome (CTS), an occupational disease, and whether she had disability as a result. The asserted date of injury was _____. The hearing officer found that the claimant had a repetitive trauma injury and disability from this injury beginning on February 19, 1999, through July 13, 1999.

The appellant (carrier) appeals. It argues that the evidence proves that activities undertaken by the claimant during her workday were insufficiently repetitive to cause injury. It argues that because of this, expert medical evidence was required to prove injury. It argues that there was "no explanation" as to why the claimant suddenly developed CTS after years of performing the same work, and after a time when procedures were implemented to decrease keystrokes. The claimant responds that any inconsistencies in the evidence were for the finder of fact to resolve. Both parties argue facts favorable to their respective positions.

DECISION

Affirmed.

The claimant worked for 13 years in the customer service department of Federal Express (employer). She said that around January 1999, she began to have numbness and tingling in her forearms. On _____, the pains increased sharply and went up to her shoulders. Because of the need to schedule time off, she said she was not able to consult with a doctor until February 19, 1999. She said she went to Dr. E, D.C., after seeing advertisements on television.

Both the claimant and the customer service representative, Ms. C, testified. Essentially, the claimant actually was at her workstation seven and one-half hours a day, not including breaks and her lunch (45 minutes). She wore a headset, and worked at a terminal and had various manuals that enabled her to call up the information required to field customer phone calls. The claimant said she often typed 50% of the time on 50% of her phone calls. She disputed the accuracy of a videotape presented by the carrier of five workers at work, and said this did not accurately show the activities of an entire day. The claimant and Ms. C agreed that about three years prior to the asserted injury, procedures were put in place that cut down on the number of keystrokes. Ms. C said that for 30% of the calls, information would have been entered at the "front end" of a transaction and would be accessible simply with one or two keystrokes (which would include mouse strokes).

There was conflicting testimony and analysis about the number of keystrokes done in the course of a telephone call. An analysis performed by a consultant for the carrier

asserted that only six keystrokes a minute were entered on the "average," although this same report indicated that there were extensive rest periods between entries of information on the keyboard. Ms. C agreed that the average worker would handle around 160 calls per day; extra busy times, such as around Christmas and on Mondays and Fridays, were handled by additional staffing. The carrier consultant stated that the average number of calls was around 220 calls per day per worker.

By focusing on the number of keystrokes, other significant facts apparent from viewing the videotape were not asserted as strongly. The videotape shows fairly small, perhaps cramped, workstations where the workers are seated in front of a terminal, hands poised over the keyboard even when not actively typing. It appears that the same sitting position is held by the workers for the length of their phone calls. The keyboards appear to be at varying heights; some workers have their arms extended at a 90 degree angle, some with hands positioned slightly upward and one slightly downward. The majority, but not all, of the workers appeared to have wrist rests extending from the keyboards. It was notable that at the apparent conclusion of a phone call, one worker is seen performing a variety of upper extremity stretching exercises, rotating her shoulders, forearms, and wrists. While there is "one-finger" typing and keystroking (done several times with the hand in a cupped, rather than extended, position), there are a number of occasions where there is a short burst of typing involving many more keystrokes than six.

The claimant said she was aware of about 10 other claims for CTS over the period of time she had worked there. Two witnesses who signed statements favorable to her case also had pending CTS claims, although she testified that only one was actively pursuing the claim as far as she knew.

The carrier argues that there is no explanation as to why the claimant would have suddenly developed CTS after a number of years. It is more accurate to say that there was no explanation developed fully in the record, by either party. The claimant stated that from September through November 1998, she was working at home and occasionally at work on a cross-stitching project for the impending birth of a friend's baby in December. The hearing officer, clearly not understanding what this activity was, asked whether this was a form of knitting and the claimant, perhaps not fully understanding the question, stated that it was. The only detail that was developed was that it was performed with one tiny needle. The parties thereafter moved on with testimony about other matters.

The claimant said she was put on light duty work for 90 days beginning on February 19, 1999, which involved only answering phone calls and no typing. She worked at the same hourly wage, but for only 28 hours a week. After 90 days, the employer informed her that this was the longest term that light duty was available, and she should not return to work until fully released. Dr. E was treating the claimant with physical therapy, some electrical stimulation, and medication. Nerve conduction testing performed on April 22, 1999, diagnosed mild bilateral CTS, left shoulder sprain, and cervical brachial neuritis.

Dr. S was telephoned and stated that based solely on his review of the videotape, he found the portrayed activities insufficiently repetitive to cause CTS. He said that CTS was

also caused by pregnancy, hyperthyroidism, myxedema, and acromegaly. Dr. S spelled, but did not otherwise define, the condition of myxedema. None of these conditions was attributed to the claimant. Dr. S's written report stated that the workstations in the videotape appear to be ergonomically arranged. By contrast, Dr. E's review of the same videotape noted the positioning of the workers' hands over the keyboard even when not keystroking, and stated:

This position, when repeated for weeks, months, and years can lead to biochemical breakdowns that include the carpal tunnel, thus leading to [CTS].

A further comment from Dr. E on the videotape stated that he found little relevance in the consultant's figure of average keystroking, except for the reason that CTS could be found in persons who did no keystroking. He stated that in all reasonable medical probability, the claimant's CTS arose from her work as a customer service representative.

On the issue of whether the claimant sustained a repetitive trauma injury, it was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.- Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.- Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.- El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.- Beaumont 1993, no writ). In this case, we cannot agree that expert evidence was required to prove the causal connection of CTS. Furthermore, although the carrier emphasizes the figure of six keystrokes per minute as insufficiently repetitive, this is plainly an average, and the hearing officer could question how meaningful this average was, given that the typing that was performed was not, in fact, "averaged" out over the entire work period.

Likewise, disability is by definition dependent upon the comparison of wages earned to the preinjury average weekly wage, even though there is a return to work. Section 401.011(16). The period of time that the claimant was working under a light-duty release, but at fewer hours, could be considered as part of her period of disability, so long as the hearing officer believed the CTS to be a producing cause.

We, therefore, affirm the hearing officer's decision and order as to the appealed issues, finding sufficient support in the record for challenged findings of fact and conclusions of law.

Susan M. Kelley
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Dorian E. Ramirez
Appeals Judge