

APPEAL NO. 992028

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 August 25, 1999. He (the hearing officer) determined that the respondent (claimant) sustained a compensable repetitive trauma left wrist injury on _____, and that she had disability from _____, through the date of the CCH. The appellant (carrier) appeals these determinations, contending that they are incorrect and not supported by sufficient evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a customer service representative for approximately four and one-half years. Her duties involved responding to telephone inquiries and entering data through a keyboard and "mouse." Both the claimant and a supervisor estimated that the number of telephone calls were between 45 and 75 per day. The claimant testified that on _____, she felt a sharp, stinging pain in her left wrist and contends that this was the result of repetitive trauma from using the keyboard and "mouse." She had not worked her normal hours since _____, and limited her claimed injury to the left wrist. She testified that she had not experienced this problem before, but then stated that she had prior minor problems, but nothing this painful.

The claimant saw Dr. MB, her treating doctor, on _____. The examination disclosed left wrist tenderness and loss of range of motion. The "tentative diagnoses" included "wrist strain/rule out carpal tunnel syndrome [CTS]." Dr. MB referred the claimant to Dr. O for an orthopedic evaluation. In a report of April 16, 1999, Dr. O noted middle finger paresthesia and a positive Phalen's test of the left wrist. His impression was CTS. X-rays and EMG testing were normal, but the neurologist stated that a normal EMG "does not rule out [CTS] which is a clinical diagnosis." An MRI on April 20, 1999, showed no abnormalities of the carpal tunnel, but did disclose a possible tear on the ulnar aspect of the triangular fibrocartilage that may have been degenerative in nature. Clinical correlation was recommended. Apparently, no further testing was authorized by the carrier. On July 26, 1999, Dr. M wrote the claimant's representative that the diagnosis continued to be "wrist strain/rule out [CTS]." He also commented that the possible cartilage tear was "certainly compatible with the kind of repetitive injuries sustained by the patient at some time during her employment. . . . Even if the tear was preexisting to her employment, it is certainly highly probable that the work-related injury aggravated any such preexisting condition."

The claimant admitted to having fibromyalgia for a number of years primarily in the neck and shoulders. Dr. M, D.C., examined the claimant's medical records at the request

of the carrier and concluded that "[w]ith the normal objective diagnostic findings, I would be more inclined to believe this was a result of Fibromyalgia" and not a work-related injury.

The claimant had the burden of proving that she sustained a compensable injury as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Section 401.011(26) defines injury as "damage or harm to the physical structure of the body. . . . The term includes an occupational disease." 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 an injury that occurs "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). In Texas Workers' Compensation Commission Appeal No. 94941, decided August 25, 1994, we pointed out that to establish a repetitive trauma injury, the claimant must present some evidence that he or she is engaged in essentially the same trauma-producing conduct that is reasonably frequent, that is, repetitive, in nature. For the repetitive trauma injury to be compensable, a claimant must further show these activities affect the claimant in a way not common to the general public, that is, that there is a causal link between the activities and the workplace. Texas Workers' Compensation Commission Appeal No. 91113, decided January 27, 1992. Whether a repetitive trauma injury has been established is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93057, decided February 25, 1993.

The hearing officer commented in his discussion of the evidence that the claimant "has not been shown to have CTS; in fact, all of the objective tests for CTS have been negative." He then mentioned the diagnosis of strain and aggravation of the cartilage tear as discussed by Dr. M. In Finding of Fact No. 2, the hearing officer found a "left wrist" injury without further specifying the nature of the injury. The carrier appeals this determination, arguing essentially that the claimant did not engage in sufficiently repetitive traumatic activities at work to cause a compensable injury and that the cartilage tear was only a possibility based on the MRI. The main focus of the CCH was the nature of the claimant's data entry activities and whether these were sufficient enough in quantity and nature to cause an injury. In numerous cases in the past, we have affirmed findings of a compensable repetitive trauma injury, typically CTS, caused by data entry activities. See, e.g., Texas Workers' Compensation Commission Appeal No. 990157, decided March 15, 1999; Texas Workers' Compensation Commission Appeal No. 982114, decided October 14, 1998; Texas Workers' Compensation Commission Appeal No. 961846, decided November 4, 1996. See *also* Texas Workers' Compensation Commission Appeal No. 990539, decided April 14, 1999. In the case before us, it was the responsibility of the hearing officer to evaluate the evidence and determine if the claimant met her burden of proving that she sustained repetitive left wrist trauma at work. The carrier argues without citation to authority that the claimant's injury had to be proved by expert evidence to a

reasonable degree of medical probability. We disagree. The hearing officer found the claimant credible in her testimony that her work activities caused a repetitive trauma injury. Under our standard of appellate review, we decline to reverse this determination. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Despite the hearing officer's apparent conclusion that the claimant failed to establish that the nature of her injury was CTS, the carrier on appeal continues to assert that the evidence did not establish CTS and that CTS is generally not related to employment. It also argues that the cartilage tear, even if it exists, would not cause the type of pain experienced by the claimant. The hearing officer found only a wrist injury without specifying the precise nature of the injury. This is consistent with the medical evidence to the extent that the claimant and Dr. MB have sought without success to obtain further definitive tests and that Dr. MB is basing his opinion as much, if not more, on his clinical judgement than on objective testing. The persuasiveness of this evidence was for the hearing officer to decide. Section 410.165(a).

The carrier appeals the disability finding on the basis of no compensable injury. Having affirmed the finding of a compensable injury, we also affirm the finding of disability.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge