

APPEAL NO. 000029

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 December 9, 1999. The hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease injury, that she did not have disability, and that she timely reported her alleged injury. Claimant appeals the injury and disability determinations on sufficiency grounds. Respondent self-insured (referred to as "carrier" herein) responds that the Appeals Panel should affirm the hearing officer's decision and order. The determination regarding timely reporting was not appealed. The issues regarding date of injury, election of remedies, timely raising of the timely reporting issue, and timely filing of a claim were withdrawn at the CCH and were not mentioned in claimant's appeal.

DECISION

We affirm.

Claimant first contends that the hearing officer erred in determining that she did not sustain a compensable occupational disease injury. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he or she sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The applicable law in this regard is set forth in or discussed in Section 401.011(26); Section 401.011(34); Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991; and Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 1994. The role of the hearing officer and our appellate standard of review in sufficiency cases is set forth in or discussed in Section 410.165(a); Texas Workers' Compensation Commission Appeal No. 992933, decided January 26, 2000; and Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Claimant testified that she does work involving repetitive computer use and that she developed pain and numbness in her hands on February 1, 1999. She said she had been previously diagnosed with lupus, but that the pain and numbness she felt in early February was different than the joint pain and burning caused by lupus flares. She testified that she has never experienced numbness like she experienced in February 1999. In an August 30, 1999, report, Dr. G stated that claimant's job involves repetitive keyboard work and that he felt claimant's continued upper extremity symptoms are partly caused by her repetitive work duties. In a May 1999 report, Dr. W stated that needle studies were performed on claimant's upper extremities and that no abnormal activity was seen. In an October 27, 1999, report, Dr. WH stated that diagnostic testing confirmed his impression that claimant's symptoms are related to her systemic lupus and are not work related.

The hearing officer assigned whatever weight he deemed appropriate to the evidence before him, including the medical evidence. He could have chosen to believe or disbelieve

any part of the evidence before him. The hearing officer stated in the decision and order that claimant did not meet her burden of proof in this case. Having reviewed the record in this case, we conclude that the hearing officer's determinations regarding injury and disability are not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. For this reason, we will not substitute our judgment for that of the hearing officer. Cain, *supra*. We note that disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id.* Because claimant did not have a compensable injury, the hearing officer properly determined that she did not have disability. *Id.*

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Dorian E. Ramirez
Appeals Judge