

APPEAL NO. 000140

On December 28, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The hearing officer resolved the disputed issues by deciding that appellant (claimant) did not sustain a compensable injury in the form of an occupational disease to both thumbs on _____, and that claimant has not had disability. Claimant requests that the hearing officer's decision be reversed and that a decision be rendered in her favor. Respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

Claimant began working as a custodian in employer's school in October 1993 and she last worked there on January 21, 1999. Claimant described her work activities and two lists of those activities were presented. Claimant said that during the summer of 1998 she began having pain at the base of both thumbs while performing her work activities. Claimant went to Dr. L on January 13, 1999, and he referred her to Dr. M, who diagnosed claimant as having arthritis of the carpal metacarpal joints of both thumbs and opined that it is medically probable that claimant's work activities may have aggravated her arthritis. Dr. L wrote that claimant is suffering with severe pain in both her thumbs and that both he and Dr. M feel that the pain is due to the repetitive motion of claimant's work. The Texas Workers' Compensation Commission sent claimant to Dr. W and he diagnosed claimant as having degenerative arthritis of the carpal metacarpal joints of both thumbs and opined that, in all medical probability, that diagnosis is not work related. In a follow-up report, Dr. W wrote that he is unable to provide a job-related causal relationship for claimant's bilateral degenerative arthritis, that he does not feel that claimant's job caused her condition, that degenerative arthritis of the carpal metacarpal joints of the thumbs occurs predominately in females, and that that condition is aggravated by activities of daily living, including any use of the hands, whether work related or not work related.

Claimant claimed that she aggravated a preexisting arthritis condition in her thumbs as the result of performing repetitious work activities in her custodian job and that she has had disability. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury. Repetitive trauma injury is defined in Section 401.011(36) and disability is defined in Section 401.011(16). The aggravation of a previously existing condition from repetitious, physically traumatic activities at work can constitute a compensable injury. Texas Workers' Compensation Commission Appeal No. 951297, decided September 21, 1995. In Texas Workers' Compensation Commission Appeal No. 981974, decided October 1, 1998, the Appeals Panel affirmed a hearing officer's decision that an employee who worked as a custodian sustained a compensable repetitive trauma injury in the form of bilateral carpal tunnel syndrome, noting that the hearing officer resolves

conflicts in the evidence, including the medical evidence, and that we should set aside a hearing officer's decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Claimant had the burden to prove that she was injured in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer found that claimant was not engaged in repetitive traumatic activity at work and that claimant's condition of bilateral thumb carpal metacarpal joint arthritis is not causally related to her employment. The hearing officer concluded that claimant did not sustain a compensable injury in the form of an occupational disease to both thumbs on _____, and that because she did not sustain a compensable injury, she has not had disability. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge