

APPEAL NO. 000147

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 27, 1999. The issues at the CCH were whether the appellant (claimant) sustained an injury in the form of an occupational disease on _____, and whether the claimant had disability from December 15, 1998, through August 18, 1999, as a result of the injury of _____. The hearing officer determined that the claimant did not show by a preponderance of the evidence that she sustained an occupational disease injury on _____, and that the claimant thus did not have disability. Claimant appeals, urging error in several findings of fact and conclusions of law and arguing that the evidence showed she did repetitive-type job duties, that a medic who saw her noticed pain when she extended her finger while bending her wrist, that she did not have a wrist sprain, and that her surgeon stated she had carpal tunnel syndrome that was related to her work. Claimant asserts she sustained a compensable injury and had disability. The respondent (self-insured) argues there is sufficient evidence to support the findings, conclusions, and decision of the hearing officer and seeks affirmance.

DECISION

Affirmed.

Claimant testified that she worked as a general worker with the employer and performed duties that included working on an assembly line, sweeping and mopping floors, packaging, and other general duties. She states that on _____, she felt pain in her right wrist as she was putting crackers in little slots. She acknowledged that she had a prior injury in _____ to her right wrist and indicated that it had resolved and the pain she felt was different on _____. She states she felt tingling in her fingers from the _____ incident but that she did not have tingling from the _____ injury. She reported the wrist pain to the plant "EMS" and a report indicated claimant had pain when she extended her fingers forward while bending her wrist outward but not inward and that there was no swelling or discoloration. She subsequently went to a medical facility and was diagnosed with right wrist sprain and released to light duty. She worked up to December 15, 1998, when she was suspended for two weeks for an unrelated disciplinary reason. She never returned to work.

She saw a Dr. B who assessed "probable injury or bruising to the Median nerve" and "allowed her her regular work activities." He subsequently treated her with an injection in the carpal tunnel and states that she had no improvement and he would be very hesitant to do a carpal tunnel release. Dr. B also indicated his feeling was that claimant has "another agenda in terms of staying off of work" and that she was unhappy about being released to regular duty. Claimant subsequently saw Dr. R who performed carpal tunnel surgery in June 1999 and opines that it was related to claimant's repetitive work activities. She was released to work by Dr. R in August 1999 and states she has looked for work, apparently without success.

Medical reports from the _____ injury state that the claimant was at that time complaining of tingling to the fingers. She was diagnosed with a right wrist sprain and "RSD [reflex sympathetic dystrophy] right upper extremity." The treatment for the RSD was not clear.

The self-insured introduced records and testimony as to the claimant's somewhat erratic work record over the last several years, including the months she was off from the _____ injury. Claimant had worked only 844 hours in 1998 and had returned to work on November 9, 1998, prior to the asserted _____ injury. Videotapes were in evidence which showed the general work activity at the claimant's place of employment.

The hearing officer found that while the claimant's work activity required movement of packages of crackers from a barrel to a line, it did not involve repetitive, physically traumatic activities to her wrist and hand; that on _____, there was no objective indication of damage to the physical structure of the claimant's right hand; that Dr. B did not feel the claimant had carpal tunnel syndrome; that the claimant did not have damage to the physical structure of her right wrist arising out of repetitive traumatic activities from work before _____; and that the claimant was suspended for other reasons and never returned to work in December 1998. Clearly, there was conflict in the evidence as to whether the claimant sustained a compensable occupational disease on _____. The claimant testified that she did; however, the hearing officer was not required to accept her testimony at face value, and he was free to believe all, part, or none of her testimony. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). He could give greater weight to the other evidence, including the prior injury (including apparently untreated RSD) to the same area; the claimant's erratic work record and having only worked a few days prior to the claimed incident date; the type of work being done at the time of the claimed repetitive trauma injury; the reports following the incident, including the reports of Dr. B; and the videotapes showing the general activity at the work location. It is for the hearing officer to resolve conflicts in the evidence and arrive at the findings in a case. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Section 410.165. There was also conflict in the medical evidence before the hearing officer, particularly Dr. B and Dr. R, and this was for him to weigh and resolve. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). From our

review of the record, we cannot conclude that the findings and conclusions of the hearing officer were not supported by the evidence or were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge