APPEAL NO. 000239

Following a contested case hearing (CCH) held on December 15, 1999, and January 11, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that on _____, the respondent (claimant) sustained a compensable injury in the form of an occupational disease, carpal tunnel syndrome (CTS) of the right wrist, and that she timely reported the injury. The appellant (carrier) requests our review of these determinations for evidentiary sufficiency, asserting that claimant's repetitive work was very light, not traumatic, and "ordinary activities of life that the general public is exposed to," and that since she lost no time from work after _____, claimant would not be entitled to any benefits and thus could not have a compensable injury. The carrier further urges that the great weight of the evidence shows that claimant did not notify the employer of her claimed injury before September 1999. The record does not contain a response from claimant.

DECISION

Affirmed.

Claimant testified that she had worked for the employer for approximately eight years until her employment was involuntarily terminated by the employer shortly before the second session of the CCH; that she sustained a work-related injury to her cervical spine in _____; that she performed various tasks on artificial flowers and trees production lines making various artificial floral and tree arrangements in planters and baskets; and that this work involved gluing the baskets, using hand cutters to trim stems, "shooting the gun" to inject foam into the baskets, placing the moss in the baskets and the floral arrangements in the foam, making and affixing labels to the product cards, and packing them for shipment to customers. She indicated that for several years before _____, her work involved more label making; that this work included obtaining shipment orders from the production lines, loading rolls of labels into the computer printer, keying in the various product codes into the computer, printing out the labels, and then sticking the labels on the product cards. She said she is right-hand dominant, that she could peel off and stick onto the cards approximately 3,000 to 4,000 labels per day, and that the number of labels she made and stuck on cards varied according to the orders. She could not estimate an average number of labels she made and applied each day but said she would make and apply from 250 to 4,000 labels per shift. Claimant said she had to make labels for and keep up with from 23 to 28 women working on the lines.

Claimant further testified that on _____, she went to Dr. M because she was having pain in her right wrist and her thumb and two fingers and was dropping things and that Dr. M performed an EMG and told her she had CTS and that it was related to her job. Dr. M's EMG report of that date reflects that the testing revealed moderate right median neuropathy at the wrist consistent with CTS and no evidence of cervical radiculopathy.

Claimant further testified that she returned to work on March 22, 1999, wearing a brace on her right wrist; that during that shift, the employer's human resources manager, Ms. W, came by her desk, saw the wrist brace, and asked her what happened; and that she replied as follows: "I told her the doctor says [CTS] and that it was job related and that I had to wear this brace," "I told her that the doctor told me it was job related."

Claimant also testified that she missed no time from work for her CTS but did take various periods of unpaid leave and that her employment was terminated shortly before the resumption of the CCH in January 1999 for having failed to timely call in.

Claimant's immediate supervisor, Mr. M, testified that, following her cervical spine injury, claimant was restricted from heavy lifting and was given the primary task of making and affixing product labels, although when not busy with labels, she helped out on the lines. He estimated that on an average day claimant would make and peel off and stick approximately 2,500 labels. Mr. M also stated that the labeling job was not a "traumatic" job.

Ms. W testified that the labeling job was "not strenuous." She also stated that when she talked to claimant about her wrist brace, claimant told her that the doctor was "running tests" and that the wrist pain "may stem from her neck injury." Ms. W further stated that the first report she had of the claimed injury came from a telephone call from the carrier in September 1999.

In his letter of October 12, 1999, Dr. M states that claimant's CTS was documented by EMG on _____; that he has prescribed a resting wrist splint for use during work activities; and that he believes her work activities "have contributed to her [CTS]."

The 1989 Act defines injury to include occupational disease, defines occupational disease to include a repetitive trauma injury but not to include an ordinary disease of life, and defines repetitive trauma injury to mean damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out and in the course and scope of employment. Sections 401.011(26), (34), and (36). In Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.), the court stated that "to recover for a repetitive trauma injury, one must not only prove that repetitious, traumatic activities occurred on the job, but also prove that a causal link existed between these activities on the job and one's incapacity, that is, the disease must be inherent in that type of employment as compared with employment generally." The Appeals Panel has stated that a claim of injury by repetitive motion should be supported by evidence of the extent and nature of the work performed and some description of the repetitive activities that would affect the employee in a way not common to the general population. *See, e.g.*, Texas Workers' Compensation Commission Appeal No. 92272, decided August 6, 1992; Texas Workers' Compensation Commission Appeal No. 950502, decided May 15, 1995; *compare* Texas Workers' Compensation Commission Appeal No. 94941, decided August 25, 1994.

Section 409.001 provides that an employee shall notify the employer of an occupational disease injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. Section 409.002 addresses the effect of failure to provide notice of injury.

In addition to the dispositive legal conclusions, the carrier challenges factual findings that claimant was engaged in repetitive tasks, making and applying an average of 2,500 price and content stickers each day, in the course and scope of her employment; that she sustained a CTS injury to her right wrist as a result of the repetitive tasks performed in the course and scope of her employment; that she knew or should have known that she sustained a work-related injury to her right wrist on _____; and that on that date, she advised the employer's human resources manager that she had an injury to her right wrist related to her employment.

Claimant had the burden to prove that she sustained the claimed injury and that she provided the employer with timely notice thereof. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.169(a)) and, as the trier of fact, weighs the evidence and resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could consider claimant's testimony, and that of her supervisor, concerning the repetitious nature of her work preceding the injury. The carrier's view of "repetitious, physically traumatic activities" would apparently limit the term to duties involving heavy weights or jarring activities. As for the timely notice issue, the hearing officer indicates that he found credible claimant's testimony concerning her conversation at her desk on March 22, 1999, with Ms. W. As for the contention that claimant could not have a compensable injury because she had no disability and was thus not entitled to income benefits, we note that the 1989 Act defines compensation to mean payment of a benefit and defines benefit to include a medical benefit. Section 401.011(11) and (5). Claimant is entitled to lifetime medical benefits. *See* Section 408.021.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Dorian E. Ramirez
Appeals Judge