APPEAL NO. 000256

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 January 10, 2000. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury in the form of an occupational disease and had disability, whether he gave timely notice of injury, and whether he made an election of remedies. The hearing officer found that the claimant sustained a compensable injury in the form of an occupational disease (repetitive trauma); that he had disability from February 19, 1999, through April 23, 1999, and no other periods (however, a conclusion of law and the decision section erroneously indicates that disability continued through the date of the hearing, a position neither advanced by the claimant nor supported by the evidence); that the claimant gave timely notice of injury; and that the claimant did not make an election of remedies. The appellant (carrier) appeals all of the determinations of the hearing officer, arguing that there is no evidence of an injury as all diagnostic tests were normal and there were only subjective complaints of pain, that the evidence does not substantiate that the claimant timely reported his injury, that the evidence shows the claimant made an election of remedies, and that without a compensable injury there can be no disability. No response is in the appeals file.

DECISION

Affirmed as modified.

The Decision and Order of the hearing officer sets forth fairly and adequately the evidence in this case and it will only be outlined here. The claimant's job in a car seat manufacturing company entailed much repetitive activity with his hands in gripping and pulling on upholstery and operating vibrating power tools on up to 100 seats per day. He developed pain in his right wrist and mentioned his pain to his supervisor and eventually sought medical attention on _____, from Dr. B. When he told Dr. B about his work, Dr. B told him he had carpal tunnel syndrome (CTS) and that his wrist problem was work related from repetitive activity, took him off work for a couple of days, and then placed him on restricted work. The claimant states that after he was told his condition was work related, he reported it to his supervisor (on September 14, 1998) and gave him the off-work slip from Dr. B. The supervisor denied that the claimant reported a work-related injury; however, there is a notation on an absence record for that date showing an entry that the claimant returned to work with a doctor's slip saying "CTS, return to regular duty." In any event, the claimant returned to work doing light duty and subsequently saw Dr. B on January 19, 1999. A medical report of that date notes his CTS has gotten worse with pain, swelling, and numbness of the right hand. The claimant was prescribed medication and placed on physical therapy. He also reported the matter to his supervisor and made out another report on January 20, 1999, since, according to the claimant, his supervisor apparently lost or misplaced the earlier report. On February 19, 1999, the claimant saw Dr. B and it was noted his condition had gotten worse and he was taken off duty. He was later

released to work on April 24, 1999. An EMG of October 13, 1998, indicated "normal conduction studies, no electromyographic evidence of nerve root compression, neuropathy or myopathy at this time."

The claimant stated that when he went in for his first appointment he did not know anything about workers' compensation and that he gave the doctor's office his wife's group insurance coverage card that he was on. He did not know how the billing worked, who his doctor billed or who paid.

The carrier offered evidence concerning CTS, the symptoms, testing, and diagnosing of CTS, and pointed out that without positive EMG and nerve conduction tests, that CTS was not confirmed.

The hearing officer indicates that he found the claimant to be clear and credible in his testimony. Assessing weight and credibility to be given evidence and testimony is the responsibility of the hearing officer and he could accept the testimony of the claimant on the issues before him. Section 410.165(a); Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Although not finding that the claimant had CTS, the hearing officer determined that the claimant sustained a compensable injury in the form of an occupational disease. He states in his discussion that the claimant's pain, numbness, swelling, tenderness, and decreased grip strength, all clinically observed, established an injury under the 1989 Act, that is, that he sustained "damage or harm to the physical structure of the body." Section 401.011(26). The carrier urges that with the correct finding of no CTS, and no other injury diagnosed or identified, the evidence does not show a compensable injury as "made up" by the hearing officer. We have noted that a specific diagnosis is not required to establish damage or harm to the physical structure of the body. Texas Workers' Compensation Commission Appeal No. 992713, decided January 20, 2000. The hearing officer could consider all of the evidence and determine that the claimant's work caused some injury to his right hand through repetitive trauma. Texas Workers' Compensation Commission Appeal No. 970637, decided May 22, 1997 (Unpublished). An injury can be found based on the claimant's testimony even though there may not be a specific diagnosis from a doctor. Texas Workers' Compensation Commission Appeal No. 972350, decided December 31, 1997 (Unpublished). We have also rejected the argument that an occupational disease was not shown on the contention that the injuries were not sufficiently identified. Texas Workers' Compensation Commission Appeal No. 980903, decided June 18, 1998 (Unpublished); Texas Workers' Compensation Commission Appeal No. 951332, decided September 27, 1995 (Unpublished). Essentially, the issue of whether an injury has been proven is a factual matter for the determination of the hearing officer based on a preponderance of the evidence standard. Texas Workers' Compensation Commission Appeal No. 000054, decided February 22, 2000; Texas Workers' Compensation Commission Appeal No. 982104, decided October 19, 1998 (Unpublished). *See also* Texas Workers' Compensation Commission Appeal No. 991605, decided September 13, 1999 (Unpublished). *Compare* Texas Workers' Compensation Commission Appeal No. 972269, decided December 19, 1997 (Unpublished). From our review of the evidence, we cannot

conclude that the determination of the hearing officer that the claimant sustained a compensable injury in the form of an occupational disease is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Since the appeal of the disability determination was predicated on no compensable injury and we have concluded that a compensable injury was sustained, we also conclude that there is sufficient evidence to uphold the determination of disability for the period beginning February 19, 1999, through April 23, 1999, and we modify the language of a conclusion of law and the decision section accordingly, specifically setting aside the language "and continuing through the date of this hearing."

It is also apparent that the hearing officer believed and gave preponderant weight to the claimant's testimony that he gave notice of injury on September 14, 1998, after seeing Dr. B and being advised his condition was work related. In this regard, we have stated that a claimant need not report the extent of an injury or a specific diagnosis for the notice to be effective. Texas Workers' Compensation Commission Appeal No. 941103, decided October 3, 1994. In a like vein, the hearing officer accepted the claimant's testimony that he did not make an informed election of remedies to use his wife's group health coverage to the exclusion of workers' compensation benefits. These were factual issues for the hearing officer to decide based on the evidence before him. Texas Workers' Compensation Commission Appeal No. 992959, decided February 14, 2000; Texas Workers' Compensation Commission Appeal No. 992532, decided December 29, 1999 (Unpublished). We do not conclude the determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Hutchinson, *supra*.

For the reasons stated, the decision and order, as modified, are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge