APPEAL NO. 000618

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 February 22, 2000. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury in the form of an occupational disease on _____; (2) claimant=s injury did not occur while the claimant was in a state of intoxication; and (3) claimant had disability. The appellant (carrier) appeals these determinations on sufficiency grounds. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant sustained a compensable injury. Carrier asserts that: (1) claimant appeared to allege a specific injury and not a repetitive trauma injury; (2) claimant worked packing boxes only two days; (3) claimant was not a credible witness and had lied about her drug use; (4) the evidence from Dr. B is not credible because he based his medical opinion on a history of repetitive lifting that was not accurate; (5) Dr. B=s diagnosis of carpal tunnel syndrome is not supported by medical evidence because claimant=s Phalen=s test and other test results were negative; and (6) claimant cannot show that she engaged in any repetitive activity at work. Regarding disability, carrier contends the hearing officer erred in determining that claimant had disability from September 15, 1999, to the date of the CCH. Carrier asserts that the medical records from Dr. B do not support the hearing officer=s determination, that it did not appear that claimant was receiving treatment, and that, because claimant has not improved, this shows her condition was not work related.

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 1989 Act defines "injury" as damage or harm to the physical structure of the body and a disease naturally resulting from the damage or harm. Section 401.011(26). The definition of "injury" includes occupational diseases. An "occupational disease" is defined as "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body," but does not include "an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). 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).

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the

hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that she normally worked running several machines, but that on _____ and _____, she was working packing boxes. She said she packed a water filter into a box, put six of those boxes into a bigger box, and then put the bigger box on a pallet. She said she filled several pallets, that she felt something pull in her hand on one day, that she felt pain in her left hand up into her shoulder, that she did not think anything of it, and that she continued to complete her shift. Claimant indicated that she has always worked with her hands all day and that she had experienced pain and other problems with her hands in the past. She testified that by July 1999, she had already been soaking her hands after work because of hand pain. Claimant said that when she woke up on Saturday September 11, 1999, a day she did not work, both wrists were swollen. She testified that she told Mr. W and later Mr. H, about the swelling in her hands. Claimant said she was sent to a clinic on September 13, 1999; that she was released to light-duty work; and that she worked both September 13 and September 14, 1999, but did not return to work after that. She testified that she saw Dr. B on September 14, 1999, and that he took her off work. She said Dr. B wanted to perform diagnostic testing, but he could not obtain permission to do testing. Claimant said she has not worked since September 14, 1999, and that her upper extremities have not improved. Claimant testified that a drug screen was performed, apparently on Tuesday, September 14, 1999, and that she tested positive for marijuana metabolites. Claimant said she had smoked marijuana about three or four weeks before the drug screen, that she did not smoke marijuana often, that she did not do so before coming to work, and that she was not under the influence of drugs on the day when she felt a pull in her hand.

In a medical report dated September 13, 1999, it was noted that claimant complained of hand pain and that her work did not involve repetitive activity. In a medical record dated September 14, 1999, Dr. B stated that claimant had swelling on the dorsum of both hands, that claimant reported noticing pain in her hands after having lifted boxes at work, and that claimant was Aunable to work pending response to treatment.@ In a November 1999 letter, Dr. B stated that claimant is under his care for injuries sustained at work, that she has remained unable to work, and that further diagnostic testing is needed to determine claimant=s diagnosis.

The hearing officer considered the issues and 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 matters carrier complains of concern fact issues for the hearing officer. Having reviewed the record in this case, we do not find the hearing officer's determinations that claimant sustained a compensable injury and that she had disability to be so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. The hearing

officer=s determinations are supported by the testimony from claimant and the evidence from Dr. B. For this reason, we will not substitute our judgment for that of the hearing officer. Cain, *supra*.

Carrier contends the hearing officer erred in determining that claimant had the normal use of her mental and physical faculties at all relevant times and that claimant=s injury did not occur when she was in a state of intoxication. AIntoxication" is defined in Section 401.013(a)(2)(B) as "not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of a controlled substance or controlled substance analogue." An insurance carrier is not liable for compensation if an employee's injury occurred while he was in a state of intoxication. Section 406.032(1)(A).

Whether the claimant was intoxicated Aat the time of the injury@ presented a factual issue for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 92173, decided June 15, 1992. In this case, carrier is apparently asserting that this case actually involved a specific injury and that claimant was intoxicated Aon the date of the injury,@ which it contends is the Apull@ to claimant=s left hand on September 9 or _____. *See* Texas Workers' Compensation Commission Appeal No. 992851, decided January 27, 2000. However, the hearing officer considered the evidence and determined that claimant sustained an occupational disease injury, and we have concluded that this determination is not against the great weight and preponderance of the evidence. Claimant=s testimony supported a claim for a repetitive trauma injury. In any case, the hearing officer could have considered the fact that there was at least a three-day delay in obtaining a drug screen after the reporting of the injury in determining the intoxication issue. *See* Texas Workers' Compensation Commission Appeal No. 991181, decided July 14, 1999; Texas Workers= Compensation Commission Appeal No. 992714, decided January 10, 2000; Texas Workers' Compensation Commission Appeal No. 950656, decided June 9, 1995. The hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts 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 trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We conclude that the evidence is sufficient to support the hearing officer=s determinations.

We affirm the hearing officer=s decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge