APPEAL NO. 000741

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 March 9, 2000. The hearing officer determined that the appellant (clamant) did not sustain a compensable injury in the form of an occupational disease and did not have disability. The claimant appeals, urging that the hearing officer=s decision is against the great weight and preponderance of the evidence and that the hearing officer erred in not determining that the claimant sustained a compensable injury, based on his finding that the claimant sustained a single-incident injury on _____. The respondent (self-insured) replies that the hearing officer did not err in resolving the issues as certified and that there is sufficient evidence to support the hearing officer=s decision.

DECISION

Affirmed in part, reversed and rendered in part.

The claimant worked in the school cafeteria for one and one-half years as a baker. The claimant=s job duties required her to bake items, serve food, and clean the kitchen area. The claimant described her job as involving the constant movement of her hands, which included kneading, rolling, pinching, and lifting. The claimant baked different food items each day and on _____, baked sweet potato pies. The claimant testified that she took the dough for the sweet potato pies out of the refrigerator which had previously been frozen; that she attempted to roll the dough with a rolling pin; that the dough was hard; that the table she was working on was too high; that she had to press down very hard; that she rolled the dough one and one-half hours; and that by the fourth pie, her forearms were burning and her wrists and hands were swollen and in pain. According to the claimant, she had no problems with her wrists or hands prior to _____. The claimant testified that on October 22, 1999, she told her supervisor, Ms. M, that her hands were hurting; that she was not sure if it was caused by the baking; and that she requested to see a doctor. The claimant worked from _____, through October 29, 1999, and sought medical treatment with Dr. G on November 2, 1999, when the school was on vacation for the entire month.

Dr. G diagnosed bilateral carpal tunnel syndrome (CTS) and took the claimant off work. In a letter dated January 24, 2000, Dr. G described the claimant=s daily work activities as involving the constant use of her hands in preparing, lifting, and serving food, and opined that the claimant suffered a repetitive trauma injury while at work. The self-insured presented a peer-review report by Dr. H. Dr. H concluded that the claimant has CTS, but that she did not sustain a repetitive trauma injury at work because of the sudden onset of pain on _____, and because pinching bread dough is not an acknowledged source of CTS.

The hearing officer made the following findings of fact and conclusions of law:

FINDINGS OF FACT

3. Prior to _____, the claimant was not developing [CTS] as a result of repetitive movement by and trauma to her wrists from her work activity for the Employer.

4. On _____, the Claimant sustained a single-incident injury to both her wrists while kneading and working dough for a sweet potato pie at work.

5. Because of her [CTS], the Claimant was unable to obtain and retain employment at a wage equivalent to her wage prior to _____.

CONCLUSIONS OF LAW

2. The claimant did not sustain a compensable injury in the form of an occupational disease.

3. Because she did not sustain a compensable injury in the form of an occupational disease, the Claimant did not have disability as a result.

The claimant asserts that the hearing officer erred in not determining that the claimant sustained a compensable injury, based on his finding that the claimant sustained a single-incident injury on _____. The record reflects that the claimant agreed to the issues as identified in the benefit review conference report and pursued the claim as an occupational disease/repetitive trauma injury. The hearing officer states in his Statement of the Evidence that he does not have jurisdiction to decide whether a single-incident injury occurred or not.

The 1989 Act defines injury to include an occupational disease (Section 401.011(26)) and occupational disease to include a repetitive trauma injury (Section 401.011(34)). Repetitive trauma injury means "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 of and in the course and scope of employment. [Emphasis supplied.]" Section 401.011(36). Dispute resolution proceedings are not governed by strict rules of pleading. Texas Workers' Compensation Commission Appeal No. 950061, decided February 24, 1995. The claimant testified that she had an onset of pain on _____, while performing a specific activity. This activity occurred only on _____.

We have previously affirmed cases in which the hearing officer found a compensable single-event injury although the issue was framed in terms of occupational disease. Texas Workers= Compensation Commission Appeal No. 992851, decided January 27, 2000; Texas Workers' Compensation Commission Appeal No. 992343, decided December 6, 1999. Based on our review of these cases, the hearing officer erred in failing to resolve the issue on a single-event theory of injury. Because Finding of Fact No. 4 has not been appealed, we reverse the hearing officer=s determination that he did not have jurisdiction to determine whether a single-incident injury occurred and render a decision that the claimant sustained a compensable injury on _____.

The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and 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). We find there was sufficient evidence to support the determination of the hearing officer that the claimant did not sustain a compensable injury in the form of an occupational disease.

The hearing officer premised his disability determination on his determination that the claimant did not sustain a compensable injury. The hearing officer did not specifically indicate dates in Finding of Fact No. 5; however, in the Statement of the Evidence, the hearing officer refers to the dates that the claimant=s treating doctor took the claimant off work. Because we have rendered a decision that the claimant sustained a compensable injury, we likewise reverse the hearing officer=s decision that the claimant did not have disability and render a decision that the claimant had disability from November 2, 1999, through March 9, 2000, the date of the CCH.

We affirm the hearing officer=s decision that the claimant did not sustain a compensable injury in the form of an occupational disease. We reverse the hearing officer=s determination that he did not have jurisdiction to decide whether a single-incident injury occurred and render a decision that the claimant sustained a compensable injury on _____. We reverse the hearing officer=s determination that the claimant did not have disability and render a decision that the claimant had disability from November 2, 1999, through March 9, 2000. We reverse the hearing officer=s order and issue an order that the self-insured is liable for workers= compensation benefits.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge