APPEAL NO. 001063

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 30, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease, bilateral carpal tunnel syndrome (BCTS), on _____; and that the claimant had disability from May 27, 1998, and continuing through the date of the CCH. The appellant (carrier) appealed, contending that these determinations are against the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked for approximately eight years as a truck mechanic. On _____, he sustained a compensable low back injury, which is not directly the subject of these proceedings. Representations were made at the CCH that the claimant reached maximum medical improvement from this injury on August 10, 1998, and was paid temporary income benefits (TIBs) from May 26 to August 10, 1998. According to the claimant, he had worked about two weeks sometime after his _____ injury doing light duty in the nature of clerical and office work and some light mechanical work, such as attaching license plates to vehicles, when he developed numbness in his hands. He contends that these hand problems are BCTS caused by his work. The carrier's position essentially was that he had not proved that he had BCTS, nor had he proved that the cause was the relatively short period of time he worked light duty.

The hearing officer considered this evidence and concluded that the claimant did sustain a compensable BCTS injury. Though not reported as a separate issue, the date of injury was determined to be _____. Regarding the nature of the alleged injury, the claimant introduced the opinions of Dr. G, his treating doctor for the back injury, and others. Dr. G concluded the claimant had BCTS as suggested by EMG testing and by his clinical evaluation. Dr. C also concluded the claimant had BCTS based on his clinical examination, which also took into consideration an apparently normal EMG testing. Dr. B also found bilateral hand numbness "consistent with median nerve entrapment neuropathy at the wrists." EMG testing on November 12, 1998, was read by the neurologist as normal with "no definite evidence of" BCTS.

The carrier relied on the opinion of Dr. L that the claimant's subjective complaints of numbness and tingling in all five fingers was not consistent with BCTS. Dr. L also concluded that his examination "reveals no objective findings indicating carpal tunnel." The carrier also introduced into evidence portions of a medical textbook which express the view that diagnosis of BCTS without electromyography is "risky," but also notes that a clinical diagnosis with a hand pain diagram can be "moderately accurate."

The carrier also argues that carpal tunnel syndrome (CTS) must be confirmed by EMG/Nerve conduction studies, particularly where as here the claimant's description of pain in all five fingers was inconsistent with a CTS diagnosis. While a positive EMG test may well be the "gold-plate" standard for rendering a diagnosis of CTS, particularly where surgery is being considered, we are pointed to no authority for the proposition that, absent a positive EMG, a hearing officer is precluded from finding the existence of CTS. In this case, there was medical evidence explaining the lack of solid EMG confirmation, but concluding that the claimant did have CTS based on a clinical evaluation. There was other evidence supportive of the carrier's position. In her role as fact finder, the hearing officer evaluated the evidence and concluded that the claimant did have BCTS. Under our standard of review, we affirm that determination. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The carrier also appeals the determination that the claimant's BCTS was caused by repetitive trauma at work. In doing so, it stresses that the claimant only reported symptoms after doing light duty and that this light duty as described by the claimant (essentially limited writing, data entry, and some mechanical work) could not produce BCTS in only two weeks. In support of this position, it offered medical professional literature and the opinion of Dr. L that the claimant did not establish that he had BCTS.

It was unfortunate that at the CCH the claimant spoke only to the period of his light duty from which it could be inferred that he claimed the BCTS was caused only by the light duty. However, the report of the benefit review conference states his position that the repetitive trauma to his hands developed from working as a vehicle mechanic and using heavy air powered tools. The claimant's Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) answers the question, "How did your accident happen?" with the statement "Repetitive mechanical work on vehicles." While clearly, it would have been preferable for the claimant to have testified to these pre-light-duty activities, we observe that by definition repetitive trauma occurs over time and that the appearance of symptoms does not necessarily limit the time of the repetitive trauma to the activities immediately preceding the symptoms. Contrary to the suggestion of the carrier on appeal, we do not construe the decision and order as stating that the BCTS was caused only by the activities in the two weeks of light duty. Rather she related this period of time to the development of symptoms.[1] In any case, we believe the testimony of the claimant and the opinions of Dr. G relating the BCTS to the claimant's work and of Dr. C that the work activities were at least an "aggravating factor" in the development of BCTS to be sufficient evidence to support the hearing officer's determination that the claimant's BCTS was a compensable injury, that is, it occurred in the course and scope of her employment.

[1]Some of this confusion may have been avoidable if date of injury had been listed by the parties as a separate issue.

We affirm the finding of disability to the extent that the carrier's appeal of this determination is premised on the absence of a compensable injury. The carrier also asserts that it was error for the hearing officer to order the payment of TIBs for the BCTS injury during the period of time the claimant was already receiving TIBs for the low back injury. We agree, Texas Workers' Compensation Commission Appeal No. 941445, decided November 28,1994, but do not construe the order as requiring the payment of TIBs except in accordance with the 1989 Act and rules. The amount of TIBs owed the claimant for the BCTS injury was not an issue at the CCH. If it becomes an issue, the parties may again utilize the dispute resolution system.

Finally, we believe that the claimant's testimony and duty excuses from Dr. G provide sufficient evidence to support the disability determination of the hearing officer.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge