APPEAL NO. 001092

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 April 20, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury and that the claimant did not have disability. The claimant appeals, contending that she had sustained the alleged injuries, challenging the testimony of the medical witnesses, asserting that she had disability, and stating that she did not fully understand the hearing officer's questions when he asked about whether she was alleging a specific injury or a repetitive trauma injury. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The hearing officer summarizes the evidence in detail in his 15-page Statement of the Evidence and Discussion. Basically, the claimant had been employed by (employer) for about seven months either on the packing line or as a chicken specialty processor. Three days prior to the claimed injury, the claimant began deboning and cutting chicken using a pair of scissors. The claimant testified that on the evening of _____ (claimant worked the second shift from about 3:45 p.m. to 11:30 p.m.) a few minutes after she started cutting chicken, she felt soreness, tightness, tingling, and numbness in her right hand; that she took off her gloves and noticed her right hand was swollen; that she reported the swelling to her supervisor who sent her to the nurse's station; that Mr. AM and Ms. JS were working at the nurse's station at the time; and that Mr. AM applied Ben-Gay to her hand, wrapped her right hand, and gave her ibuprofen. Exactly what was said and the condition of the claimant's hand and wrist is disputed. Mr. AM testified that the claimant's hand and wrist was not swollen, that he observed no injury, and that the treatment was for the clamant's comfort and relief of any pain she may have had. The claimant testified that she returned to work, left work around 11:30 p.m., and went to a "house party" where she unknowingly drank some spiked punch. The claimant testified that she went home around 4:00 a.m. and went to work the next day, December 10th. The claimant testified that after going to work, she again noticed her right fingers, right hand, right wrist, and right arm swollen and that she again went to the nurse's station and spoke with Mr. AM. Again what was said and the condition of the claimant's right hand and right arm is disputed. Mr. AM testified that he took measurements of the claimant's arms and wrists and that the right arm was not swollen when compared with the left. Mr. AM prescribed some work restrictions and the claimant was given modified duty. Ms. JS noted that the claimant's breath smelled of alcohol and the claimant's supervisor was notified. A breath analyzer test (BAT) was performed and the claimant registered .039. The claimant was eventually suspended, apparently later on on December 19th, for three days for being under the influence of alcohol. The claimant returned to work on December 16th and there is some dispute whether the claimant was required to take another BAT and drug

screen. There is some confusion whether the BAT was to be taken on December 16th or 17th. The claimant testified that she refused to take the BAT on December 17th because her doctor, Dr. S, had taken her off work in the meantime (on December 16th). The claimant said Dr. S took her off work "indefinitely." The claimant asserts she had disability until February 24, 2000, when Dr. S certified her at maximum medical improvement (MMI).

The claimant had no exhibits in evidence and the only medical evidence is that offered by the carrier. The claimant testified that after speaking with the nurses at the nursing station, the claimant attempted to get an appointment with Dr. S on December 16th, but she was unable to see him until December 17th. The only report from Dr. S is dated February 28, 2000, where he recites various "subjective symptoms" of pain, including "Numbness and swelling in the right hand." Dr. S states that carpal tunnel syndrome (CTS) tests were negative and assesses a four percent impairment rating (IR) for a cervical injury. The claimant said that she had previously treated with Dr. S for a back injury. The claimant was also examined by Dr. C, who in a report dated March 2, 2000, stated that Phalen's and Tinel's signs for CTS were negative, found no injury to the right upper extremity, and assessed a zero percent IR. Dr. C also testified at the CCH and said that he had diagnosed a right wrist sprain based on the claimant's subjective complaints. The hearing officer summarizes both Dr. S's report and Dr. C's report and testimony in detail. The hearing officer clearly did not give much, if any, credence to Dr. S's report.

The hearing officer, in his discussion, commented:

> In fact, most of the findings and opinions rendered in the medical records were based on subjective complaints of Claimant that were not verifiable by credible evidence.
>
> This Hearing Officer has determined Claimant was neither credible nor truthful in the presentation of her claim.

The claimant, in her appeal, asserts that she did sustain a compensable injury "in the form of an occupational disease," that Mr. AM's testimony should be disregarded because he is employed by the employer, that she should have made sure that Dr. S found some objective symptoms, and that Dr. C's testimony was not credible.

An occupational disease is "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. . . . The term 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). A repetitive trauma injury is "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." Section 401.011(36). An employee must prove, by a preponderance of the evidence, the compensability of an occupational disease. Texas

Workers' Compensation Commission Appeal No. 960582, decided May 2, 1996, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980).

The hearing officer determined that the claimant did not show that the actions involved in her employment are causally linked to her condition. The hearing officer clearly found Dr. C's and Mr. AM's testimony more persuasive than that of the claimant. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

In that we are affirming the hearing officer's decision that the claimant had not sustained a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Philip F. O'Neill
Appeals Judge