APPEAL NO. 001182

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 27, 2000. The hearing officer determined that appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the claimant did not have disability; that respondent (carrier) is not relieved from liability under Section 409.002 because of the claimant's failure to timely notify the employer under Section 409.001; and that the date of injury is August 23, 1999. The claimant appeals, urging that the hearing officer's determinations that she did not sustain a compensable injury in the form of an occupational disease and did not have disability are against the great weight and preponderance of the evidence. The carrier replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed. The issues of notice and date of injury have not been appealed and have become final. Section 410.169.

DECISION

Affirmed.

The claimant was employed as a sales representative for the employer and her job duties required her to make outbound calls and write down information. The claimant testified that she wore a headset and placed an average of 130 outbound calls per day on a touch-tone telephone. The claimant was suspended on August 3, 1999, for eight days as a result of leaving employment without permission.

The claimant testified that three to four days after the suspension, she started having neck and wrist pain and she reported this to her doctor, Dr. M, on August 16, 1999. In a recorded statement taken on September 20, 1999, the claimant stated that she noticed some pain in her wrist and hands prior to her suspension, but it was after she stopped performing her job duties that she had an increase in pain. The claimant was terminated from employment on August 17, 1999. The claimant testified that on September 9, 1999, she had a hearing before the Texas Workforce Commission, did not mention a wrist injury, and said that she was able to seek full-time work. The claimant reported the injury to the employer on September 14, 1999.

The medical records of Dr. M indicate that on August 23, 1999, the claimant reported right wrist and elbow pain and said that she thought it was carpal tunnel syndrome (CTS) and was work related. On September 1, 1999, Dr. M diagnosed tendonitis of the right wrist. On January 26, 2000, the claimant was examined by Dr. O. Dr. O noted that the claimant had evidence of symptom magnification, negative bilateral Tinel's and Phalen's signs, and normal EMG and nerve conduction studies. A medical record of Dr. CM in February 2000, states a diagnosis of right CTS and tendonitis.

The claimant's manager, Ms. S, testified that the claimant did not mention any wrist complaints when she was suspended or terminated. Two of the claimant's coworkers

testified that the claimant did not make any complaints of a wrist injury and had no problems performing her job.

The claimant had the burden to prove that she sustained an occupational disease to her right wrist-tendonitis and CTS. Whether she did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Although a diagnosis of CTS must be based on expert medical evidence, we have routinely held that the cause of CTS can be established by the testimony of the claimant alone if found credible by the hearing officer. *See, e.g.*, Texas Workers' Compensation Commission Appeal No. 961008, decided July 1, 1996; Texas Workers' Compensation Commission Appeal No. 941077, decided September 26, 1994; and Houston Independent School District v. Harrison, 744 S.W.2d 298 (Tex. App.-Houston [1st Dist.] 1987, no writ). The hearing officer is, nonetheless, allowed to consider medical evidence along with a claimant's description of work duties in determining whether causation has been proved.

The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). The hearing officer was presented with conflicting evidence concerning whether the claimant had CTS. The hearing officer did not find the claimant's testimony persuasive that her repetitive work activities caused an injury. 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 claimant appealed the hearing officer's finding of no disability. "Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge