

## APPEAL NO. 001395

On May 19, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on \_\_\_\_\_, and that claimant has not had disability. Claimant requests that the hearing officer's decision be reversed and that a decision be rendered in her favor, or, in the alternative, that the case be remanded to the hearing officer. Respondent (carrier) requests that the hearing officer's decision be affirmed.

### DECISION

Affirmed.

Claimant is claiming an occupational disease in the form of a repetitive trauma injury to her upper extremities. The \_\_\_\_\_, date of injury, the date claimant knew or should have known that her disease may be related to her employment, is not in dispute. Claimant testified that she was working as a salesperson for employer in \_\_\_\_\_ when she sustained a right foot injury at work; that during work hardening for her right foot injury, her left elbow swelled up; that her left elbow got better before she returned to work for employer in October 1998; that when she returned to work she was provided a job where she sat and repackaged small clothes items for four hours a day; that she used tape from a tape gun to do the repackaging; that in January 1999 she had swelling in both arms; that at an unspecified time she began working six hours a day; that sometime after \_\_\_\_\_, she was reassigned to be a people greeter; that her greeter job required her to use a sticker gun to place stickers on items being returned by customers; that at some unspecified time she began working eight hours a day; that she last worked in March 1999; and that she had left arm surgery in January 2000.

Ms. E, claimant's supervisor, testified about the part-time, light-duty work repackaging items claimant was given when she returned to work in October 1998 and about the greeter job claimant was subsequently given.

Dr. H, claimant's treating doctor, wrote in August 1999 that claimant showed signs of bilateral ulnar neuropathy and carpal tunnel syndrome caused by repetitive scanning over a several-month period at work. Claimant said that she did not use a scanning device at work, but did use a sticker gun when she was a greeter. Dr. M reported that EMG studies done in November 1999 showed that claimant has bilateral carpal tunnel syndrome, bilateral radial tunnel syndrome, and bilateral cubital tunnel syndrome. On January 14, 2000, claimant underwent a left carpal tunnel release, a decompression of the left ulnar nerve at the elbow, and a decompression of the left radial nerve in the forearm. Dr. H wrote in May 2000 that claimant's left elbow bursitis is related to picking up weights in her work hardening program for her right foot; that when claimant returned to work in October 1998 she used a gun and wrapped all day long; that claimant's neuropathy

progressively developed and became worse as a result of work activity over the next three-to six-month period; that claimant developed bilateral upper extremity neuropathy as a result of repetitive work duties after her return to work in October 1998; that he does not believe that the left elbow bursitis caused the left carpal tunnel syndrome, the left ulnar neuropathy, or the left radial neuropathy; and that those conditions were caused by repetitive activity.

Claimant had the burden to prove that she sustained a repetitive trauma injury as claimed. The hearing officer found that claimant did not injure any part of her body while working for employer wrapping packages and performing other assigned light-duty activities and concluded that claimant did not sustain a compensable injury in the form of an occupational disease on \_\_\_\_\_. The hearing officer also determined that claimant has not had disability as a result of her claimed injury of \_\_\_\_\_. Without a compensable injury, claimant would not have disability as defined by Section 401.011(16). The hearing officer noted in her decision that Dr. H was not sufficiently informed of the true nature of claimant's light-duty activities. Claimant contends that the hearing officer's determinations are against the great weight and preponderance of the evidence. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

---

Robert W. Potts  
Appeals Judge

CONCUR:

---

Alan C. Ernst  
Appeals Judge

---

Judy L. Stephens  
Appeals Judge