APPEAL NO. 001493
FILED AUGUST 9, 2000

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 May 23, 2000, in _____, Texas, with _____ presiding as hearing officer. She determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease and had disability from _____, through _____. The appellant (carrier) appeals, 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 as an airline reservation agent. She testified that the job involved receiving telephone calls, inputting data into a computer, and reading data on a monitor. She said that the chair and keyboard she used were adjustable but that the monitor was not, and that the repetitive motion of moving her head to look down at the screen constituted a repetitive trauma injury. She estimated that in a typical eight-hour day, five hours were spent moving her head to look at the screen. She had a prior work-related carpal tunnel injury and payroll records reflect in May 1999, she worked 24.80 hours; in June, July, and August 1999, zero hours; in September 1999, 53.30 hours; in October 1999, 50.80 hours; in November 1999, 27.30 hours; and in December 1999, 97.80 hours.

No issue of date of injury was before the hearing officer. The parties proceeded under the premise that if there were a compensable injury, the date would be _____. The claimant testified that she developed tightness in her neck about two years ago. On December 22, 1999, she went to a previously scheduled appointment with (Dr. B), apparently her treating doctor for the carpal tunnel injury. In his report of this visit he mentioned a "cervical condition" which he described as a "new injury" that had developed since _____and which "is, of course, the typical condition that we see as a result of repetitive postural trauma." He diagnosed myofascitis, a chronic inflammation of muscles, and he testified at the CCH that this was caused by "prolonged exposure to a particular posture," in this case, looking down at the monitor. He first said that this came from doing this activity for eight hours a day and then said it could be caused by such activity for two to three hours a day. On _____, the claimant was referred by the employer to (Dr. R), who diagnosed myofascial pain of the neck and shoulders and also concluded that it was a repetitive trauma, work-related injury.

Section 401.011(26) defines an injury as "damage or harm to the physical structure of the body" including an occupational disease. A repetitive trauma injury is

an occupational disease "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). The term occupational disease excludes 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).

The claimant had the burden of proving she sustained an occupational disease as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so presented a question of fact for the hearing officer to decide. The hearing officer considered the evidence and concluded that the claimant's posture and activity at work constituted repetitive trauma beyond that to which the general public is exposed. Both at the hearing and on appeal, the carrier argued that the claimant worked at an ergonomically correct workstation, that the hours spent on the job in the months preceding the claimed injury were significantly less than a 40-hour week, and that the medical evidence was premised on an erroneous belief that the claimant worked substantially more hours than she in fact did in these months and/or that her workstation was "not ergonomically safe." Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. While we have stated that ordinary sitting, walking, and standing activities at work generally cannot cause a compensable injury (*see* Texas Workers' Compensation Commission Appeal No. 931067, decided December 31, 1993), the hearing officer could conclude in this case that the posture that the claimant assumed at work was more than that to which the general public is exposed. She could also determine, based on Dr. B's testimony, that the claimant did not have to engage in this activity at work for 40 hours a week, but that such trauma occurring regularly but over a lesser period of time was sufficient to cause this injury. There was evidence in this case from which the hearing officer could conclude that the claimant was engaged in something other than ordinary sitting while at work. 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 find the evidence sufficient to support the hearing officer's determination that the claimant sustained a compensable occupational disease.

The carrier appeals the disability determination to the extent that it contends there was no compensable injury. Having affirmed the finding of a compensable injury, we also affirm the finding of disability.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge