APPEAL NO. 001629

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 June 22, 2000. With regard to the only issue before him, the hearing officer determined that the appellant (claimant) had not sustained a compensable injury in the form of an occupational disease (repetitive trauma) on _____ (all dates are 1999 unless otherwise noted).

The claimant appealed, contending that her activities using a computer required her to move her "head and neck repeatedly up and down and to the side" for eight to ten hours a day, five to six days a week and those repetitive activities aggravated her degenerative disc and joint disease, citing Texas Workers' Compensation Commission Appeal No. 990307, decided March 24, 1999. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The appeals file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The background facts are not much in dispute. The claimant was employed out of her home as a senior commercial property insurance adjuster for the employer insurance company (not the carrier in this case). In evidence are photographs of her home office, which included a desk, computer, printer, telephone, facsimile machine, cabinets, and other equipment associated with a workstation. The claimant testified that she was working eight to ten hours a day, five to six days a week and using the computer and other office equipment which caused her to repetitively move her head and neck up and down and sideways. The claimant argued that she had had a prior workers' compensation claim for carpal tunnel syndrome and cubital tunnel syndrome. Basically, this case comes down to whether the described activities constitute such a repetitive and physically traumatic activity to cause a cervical injury.

The claimant's treating doctor for her prior injury was Dr. E. Dr. E's reports in evidence appear to relate only to the claimant's prior injury and the claimant testified that Dr. E referred her to Dr. M for testing. In a report dated October 4, Dr. M concluded that the claimant had an abnormal EMG and C7 radiculopathy on the left "chronic and moderate to severe" which represents a "new and significant interval finding from the previous study of June 17, 1997." The claimant was then referred to Dr. B, a neurosurgeon, who has become the claimant's treating doctor for this injury. An MRI performed on November 22 had an impression of "degenerative disc disease at C4-5 and C5-6 with minimal annular bulge and no central canal stenosis or neural foraminal narrowing." In a report dated November 30, Dr. B commented:

> [The claimant] recently underwent a cervical MRI to evaluate neck and arm pain. She does have discal degeneration with loss of disc height at C4-5 and C5-6 and disc dessication. There is a mild left paracentral disc bulge at those levels, but there is no central canal stenosis, neuroforaminal narrowing or lateral recess narrowing. I do not think on the basis of the MRI I can account for pain into the arm. She does have degenerative changes at this level, but no neurocompressive lesions are identified on the MRI.
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> I would not recommend surgical treatment of her neck at this time, if neck pain becomes more severe a cervical diskectomy and anterior fusion might be beneficial in relieving that, but I do not think that it would have a beneficial effect on her arm pain.

In a "To Whom It May Concern" report dated February 23, 2000, Dr. B commented:

> [The claimant] has been seen in my office and cared for because of cervical disc degeneration. She has cervical disc degeneration at C4-5 and C5-6 and flattening of the cervical lordosis at C3-4. This I think has been aggravated and caused continuation of neck problems as a result of her work activities, the bending and turning necessary for her to do her job as an office worker exacerbate her symptoms and her physical findings. The positioning of her work place and desk turning to the left does aggravate and add to this condition.

The claimant's medical records were reviewed by Dr. H, who in a report dated May 19, 2000, opined that the claimant had "preexisting cervical degenerative disc & joint disease (DDD/DJD)," that the DDD/DJD was an ordinary disease of life which "frequently causes neck pain without any inciting/exacerbating activity," and that the claimant's cervical complaints are subjective and cannot be objectively verified. Dr. H states that it is "medically *improbable*" (emphasis in the original) that the claimant has a new injury.

The hearing officer found that although the claimant's neck movements may well have been repetitious, they were not traumatic and did not affect the claimant in a way not common to the general public. The claimant contends that her job activities "required much more repetitive, traumatic activity than the general public." 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). "[O]ne must not only prove that recurring, physically traumatic activities occurred on the job, but must also prove that a causal link exists between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared to employment generally." Texas Workers' Compensation Commission Appeal No. 950868, decided July 13, 1995, citing Davis v. Employers Insurance of Wausau 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.).

The hearing officer determined that the claimant did not show that the actions involved in her employment are causally linked to her condition. In Texas Workers' Compensation Commission Appeal No. 950816, decided July 5, 1995, a case cited by the carrier, the Appeals Panel wrote that Texas courts have stated the element of causation in repetitive trauma cases as follows:

> "To recover for an injury of this type, one must not only prove that repetitious traumatic activities occurred on the job, but must also show that a causal link existed between the traumatic activity and the incapacity; that is, the disease must be inherent in the type of employment as compared with employment generally. [Citation omitted.]" Texas Employers' Insurance Association v. Ramirez, 770 S.W.2d 896, 899 (Tex. App.-Corpus Christi 1989, writ denied); Davis, [*supra*].

The claimant cites as dispositive authority Appeal No. 990307, *supra*, a case of a secretary who performed "computer work about 80% of the time." In that case, the hearing officer commented that "the pinching of the nerve caused by turning would make the nerve more irritated" but still found that the claimant in that case had not sustained an injury to her cervical area. The Appeals Panel reversed and remanded, pointing out that the hearing officer's own comment that the pinched nerve was caused by the turning of her neck and a "nerve injury may be a compensable injury even if it is caused by the aggravation of an ordinary disease of life." In this case, the hearing officer only found the movement repetitious and specifically found that the head movement was not traumatic, as opposed to the finding in Appeal No. 990307 that the head movement caused a pinched nerve.

Regarding the medical evidence, a report from Dr. B says that he thinks the head movement aggravated the claimant's degenerative condition while a report from Dr. H says that it did not. The claimant argues that more weight should be given to Dr. B's report because he actually examined and treated the claimant while Dr. H only did a record review. That, however, is a matter for the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)) to determine. It was for the hearing officer, as the trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The claimant, in essence, asks us to rule, as a matter of law, that

head movements in the use of a computer and office equipment resulted in a repetitive trauma injury. We decline to do so.

Upon review of the record submitted, we find no reversible error. 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:

Kathleen C. Decker
Appeals Judge

Robert W. Potts
Appeals Judge