APPEAL NO. 001642

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 June 1, 2000. The hearing officer determined that the respondent (claimant) sustained an occupational disease in the form of a repetitive trauma injury to his left knee on _____. The appellant (self-insured) appealed, contending that the claimant's activities at work were not sufficiently repetitious and traumatic to cause the claimed injury and that the hearing officer failed to make complete findings of fact as to the nature of the compensable injury. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant worked for over 17 years as a driver of an 18-wheel truck with standard transmission. He testified that driving the truck required him to manually depress the clutch pedal when starting and stopping and that he often worked 10 or more hours a day. He said that in city stop-and-go traffic, he had to repeatedly press the clutch pedal. According to the claimant, _____, was a rainy day with a lot of traffic and that while operating the truck, he experienced severe pain in his low back, left hip, and left knee and/or leg. In a letter of February 1, 2000, Dr. M, the treating doctor, wrote that in his opinion "the preponderance of causation" for the claimant's condition was "chronic recurrent overloading of the knee due to work place activities. . . ." These included operating the clutch "several hundred times a day."

The claimant had the burden of proving he sustained an occupational disease. Section 401.011(34) defines an occupational disease as excluding an ordinary disease of life to which the general public is exposed outside of employment. Included in the definition is a repetitive trauma injury, which is an injury which occurs over time as a result of repetitious, physically traumatic activities that arise in the course and scope of employment. To recover for a repetitive trauma injury, a claimant must prove not only that repetitious, physically traumatic activities occurred on the job, but also that there is a causal link between the activities and the injury, that is, that the injury is inherent in that type of employment as compared to employment generally. Texas Workers' Compensation Commission Appeal No. 92272, decided August 6, 1992. The hearing officer commented at the CCH that he believed the driving activities of the claimant were beyond that experienced by the general public outside employment and found that they constituted repetitive trauma to the knee. From this he concluded that the claimant sustained an occupational disease to the left knee.[1] The self-insured appeals this determination questioning whether the activities involved in depressing the clutch were repetitious, frequent, and traumatic enough to cause an injury. It posits that the claimant experienced no more than an ordinary disease of life. The claimant testified to many years of driving this type of truck and what he had to do with the clutch throughout this time,

[1]The actual diagnosis was knee strain or crepitus pending further testing.

especially in heavy traffic. Whether these activities constituted repetitive trauma beyond that experienced by the general public and whether these activities caused an injury to the claimant presented questions of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94941, decided August 25, 1994. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer considered the claimant's testimony about his employment activities and the carrier's arguments that the claimant only suffered an ordinary disease of life. From this he concluded that the claimant met his burden of proof and established a repetitive trauma occupational disease. 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). Nothing in the self-insured's appeal persuades us that the decision of the hearing officer on this issue lacked sufficient evidentiary or legal support in the record. For this reason, we affirm that determination.

The issue presented to the hearing officer for resolution was, "[w]hether Claimant sustained a compensable injury in the form of an occupational disease on _____[.]" The focus of the CCH was the claimed knee injury, although the claimant described other injuries. The hearing officer limited his finding to a compensable knee injury based on the evidence before him. In its appeal, the self-insured contends that the hearing officer "must make findings of fact and conclusions of law based upon what the injury is and the facts presented at the [CCH]." The decision of the hearing officer is limited to a determination that the claimant had a compensable knee injury. We do not, and apparently the self-insured does not, interpret it as a determination that the injury did not include anything else. If, in the future, a dispute arises over the extent of the compensable injury of _____, the parties may resolve it through the dispute resolution system.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge