

APPEAL NO. 001842

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 July 10, 2000. With respect to the issues before her, the hearing officer determined that the repetitively traumatic activities that the respondent (claimant) performed at work caused her to aggravate a preexisting bilateral carpal tunnel syndrome (CTS); that the compensable injury extends to and includes reflex sympathetic dystrophy (RSD); that the claimant timely reported her injury to her employer; that the appellant (carrier) did not waive its right to contest the compensability of the claimant's RSD; that the claimant is not a seasonal employee requiring an adjustment of her average weekly wage; and that the claimant had disability as a result of her compensable injury from April 20, 1999, through the date of the hearing. In its appeal, the carrier argues that the hearing officer's determinations that the claimant sustained a compensable aggravation injury; that she timely reported her injury to her employer; and that she has had disability as a result of her compensable injury from April 20, 1999, through the date of the hearing are against the great weight of the evidence. In her response to the carrier's appeal, the claimant urges affirmance. The parties stipulated that if the claimant sustained a compensable repetitive trauma injury, the date of injury is _____. The carrier did not appeal the hearing officer's determinations that the claimant's compensable injury extends to RSD and that she is not a seasonal employee. The claimant did not appeal the determination that the carrier did not waive its right to contest RSD.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that she was hired by the employer to be the manager of a school cafeteria in late July 1998. She stated that she began working at the school in early August 1998 and that her initial duties required her to sell lunch tickets to the students and to clean and stock the kitchen with the required supplies. Beginning August 18, 1998, the claimant began the daily cooking and baking duties. She stated that she was required to lift large cans of food, heavy pots and pans, boxes of frozen food, and cases of milk. The claimant stated that before she began working for the employer she had had problems with numbness and tingling in her hands; however, she stated that the problems grew worse as she performed the heavy work for the employer. On _____, she awoke and her right hand was completely numb; therefore, she paged her supervisor Ms. C and told Ms. C that she needed to go to the doctor. Ms. C agreed to cover the claimant's shift while she went to the doctor.

On _____, the claimant saw her family doctor, Dr. P, about the numbness in her hand. Dr. P diagnosed possible bilateral CTS. The claimant testified that Dr. P told her that her work duties had aggravated her preexisting CTS; however, Dr. P's progress notes do not so state. Dr. P referred the claimant for EMG testing on September 4, 1998, which confirmed the bilateral CTS diagnosis. Thereafter, Dr. P referred the claimant to

Dr. T, with whom she had her initial appointment on October 28, 1998. Dr. T's notes from a February 23, 1999, visit reflect that he treated the claimant conservatively in the hope that she would be able to complete the school year in the cafeteria. April 16, 1999, progress notes reflect that the claimant's right CTS is "bothering her to a significant degree" and that she wants to proceed with carpal tunnel release surgery on the right. Dr. T performed that surgery on April 20, 1999. The claimant stated that she returned to work on May 2, 1999, following her surgery and continued to work until May 14, 1999, when she had to quit working due to the development of RSD. She stated that she began to miss time again on May 15, 1999, and that on August 18, 1999, Dr. T released her to return to work and the claimant contacted Ms. C about returning to work and was advised that another employee had been hired for her former position. In a progress note dated August 17, 1999, Dr. T stated that the claimant is "doing well enough that she can go ahead and return to work." Dr. T also completed a form on August 17th stating that the claimant could return to work on August 18, 1999. The place on the form for listing the claimant's restrictions is blank.

In progress notes dated May 26, 1999, Dr. T stated that the claimant is presenting with an RSD picture. Dr. T's June 11, 1999, report states that the claimant's right hand "is getting even more puffy" and that her hand is also "getting stiffer and her pain level is becoming more pronounced" and that she reports episodes of her right hand turning blue. At that time Dr. T referred the claimant to Dr. K, who on June 11, 1999, confirmed the RSD diagnosis in the claimant's right arm.

On the issue of causation, Dr. T stated in a July 21, 1999, "To Whom it May Concern" letter that the claimant's job activities with the employer "contributed to this [CTS] here and either caused or certainly aggravating [sic] this to the extent that it eventually required surgical intervention. Therefore, it is felt that this is related to her job activities." In an August 5, 1999, letter, Dr. P noted that the claimant presented on _____, with findings consistent with bilateral CTS, which he opined was "most likely related to the repetitive motions at work."

On the issue of timely notice, the claimant testified that she told Ms. C on _____, after she returned to work following her appointment with Dr. P, that Dr. P had told her she had possible CTS and that it was probably work related. Specifically, the claimant testified that the best that she can recall she told Ms. C that she probably had CTS and that her work activities had irritated the preexisting condition. The claimant acknowledged that she did not tell her employer that she was going to pursue a workers' compensation claim until April 1999; however, she maintained that she nonetheless advised Ms. C on _____, that her activities at work had aggravated her preexisting CTS. In her recorded statement, Ms. C maintained that it was not until April 15, 1999, that the claimant advised her that her CTS was work related.

The carrier had Dr. B perform a peer review and directed several questions to him. In a report dated June 22, 2000, Dr. B opined that the claimant's bilateral CTS was not caused by her work activities with the employer.

The claimant had the burden to prove that she sustained a compensable occupational disease, repetitive trauma injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. 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 manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

On appeal, the carrier contends that the hearing officer's decision that the claimant sustained a compensable injury is against the great weight of the evidence, emphasizing the short duration of the claimant's employment with the employer and contending that the claimant's evidence fails to establish the causal connection between her employment and her bilateral CTS. In her decision, the hearing officer acknowledged that the claimant had only performed the strenuous job duties for a "brief period of time before her symptoms became severe"; nevertheless, the hearing officer determined that "a preponderance of the credible evidence contained in the record supports Claimant's position in this litigation to the effect that her employment duties with Employer caused her to aggravate preexisting [CTS]" The hearing officer's determination in that regard is supported by the claimant's testimony and the evidence from Dr. T and Dr. P. Our review of the record does not demonstrate that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse it on appeal. Pool; Cain.

The question of whether the claimant timely reported her injury to her employer was also a question of fact for the hearing officer to resolve. She did so by crediting the claimant's testimony that although she did not realize that she could pursue a workers' compensation claim for her bilateral CTS until April 1999, when she so advised Ms. C, she nonetheless, told Ms. C on _____, following her appointment with Dr. P, that Dr. P suspected that the claimant had bilateral CTS and that it was work related. The hearing officer was acting within her province as the fact finder in deciding to credit the claimant's testimony and in determining that she timely reported her compensable injury. Nothing in our review of the record reveals that the hearing officer's determination that the claimant timely reported her injury to her employer is so contrary to the great weight and preponderance of the evidence as to compel its reversal on appeal. Pool; Cain.

Lastly, we consider the carrier's challenge to the hearing officer's determination that the claimant had disability from April 20, 1999, through the date of the hearing. At the hearing, the ombudsman assisting the claimant stated that the claimant was only alleging disability for the periods from April 20 to May 2, 1999, and from May 15 to August 18,

1999. The claimant acknowledged that she returned to work in the period from May 3 to May 14, 1999, and, as noted above, Dr. T gave the claimant what appears to be a full-duty release effective August 18, 1999. The claimant testified that on August 18th she called Ms. C about returning to work and was told that her position was no longer available. Because the claimant did not appear to assert that she had disability after August 18, 1999, and in light of the fact that Dr. T released the claimant to full duty as of that date, we agree with the carrier that the evidence does not support a determination that the claimant had disability for the period from August 18, 1999, through the date of the hearing. In addition, the claimant acknowledged that she returned to work for the period from May 3 to May 14, 1999. Therefore, the evidence likewise does not support a finding of disability for that period. Accordingly, the hearing officer's determination that the claimant had disability from April 20, 1999, through the date of the hearing, is reversed and a new decision rendered that the claimant had disability from April 20 to May 2, 1999, and from May 15 to August 18, 1999.

The hearing officer's determinations that the claimant sustained a compensable occupational disease injury in the form of bilateral CTS and that she timely reported her injury to her employer are affirmed. The determination that the claimant had disability as a result of her compensable injury from April 20, 1999, through the date of the hearing, is reversed and a new decision rendered that the claimant had disability from April 20 to May 2, 1999, and from May 15 to August 18, 1999.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge