APPEAL NO. 002351

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 September 14, 2000. The issues at the CCH were whether the respondent (claimant) sustained an injury in the form of an occupational disease on _____, and whether she had disability as a result. The hearing officer found that the claimant sustained a repetitive carpal tunnel syndrome (CTS) and de Quervain's syndrome injury to her right hand and wrist and that she had disability from March 27, 2000, through the date of the CCH.

The appellant (carrier) appeals and argues that the hearing officer erred by applying the first-distinct-manifestation doctrine instead of the last-injurious-exposure doctrine. The carrier argues that the claimant's activities were not repetitive or traumatic enough to cause injury. The carrier argues that the hearing officer's findings of fact and conclusions of law are inadequate to establish the elements of a compensable injury. The carrier finally asserts inadequacy of evidence on disability. The claimant responds that neither the first-distinct- manifestation doctrine nor last-injurious-exposure doctrine apply to this case, as there was a single employer and single carrier for the period of time in issue. The claimant argues that the evidence is sufficient to support the hearing officer's decision.

DECISION

We affirm the hearing officer's decision.

The claimant, who was left-handed, was employed to work on the assembly line for (employer) and had worked for about 14 months at the time of her injury. She said that she first worked on assembling masks for eight or nine months, then was transferred to other operations which included filling and capping bottles, packing them first with cotton. She agreed that the process was somewhat automated and that there was rotation during the day through all functions. (There was rotation in the mask assembly operation as well, every 30 to 45 minutes.) She said that she had to hand-pack gauze into some bottles, exerting pressure on the bottles with her fingers.

The claimant said that she began to experience right-handed numbness and cramping at the end of January 2000. She saw the company nurse on _____ and was given ice packs and anti-inflammatory medication. The claimant saw Dr. L on February 9, who gave her restrictions that she said she took to her employer but which were not followed. On February 10, Dr. L told her not to use her right hand for two days. On February 14 she was taken off work for a week and assigned by her employer to cleaning. The claimant said she did this for one day then was sent home because there was no more light-duty work for her. Dr. L also prescribed a support brace.

When the claimant went to see the safety manager, Ms. B, she was sent to the company doctor and given restrictions. The claimant said she was told she had a "twisted

wrist." After five weeks of being treated by this clinic, she was no better. The claimant was referred by her family doctor to Dr. D, who told her she had tendinitis and CTS. The claimant was put on restrictions (and again maintained that these were not followed by the employer), then was told by the employer on March 27 that there was no one-handed work available. She contended this was her first day of disability. The claimant said that Dr. D is considering surgery. Medical records from Dr. D support the diagnoses and the causal connection to the activities that the claimant described to him on the assembly line. EMG testing results were consistent with early right-sided CTS.

A video is in evidence purporting to show the functions the claimant performed at the time she contended as her date of injury. The claimant contended that it did not show everything she did. Ms. B, who was a doctor by training in another country but not licensed in Texas, said that the company had their processes studied by an ergonomic engineer in 1997, and made several changes as per the engineer's suggestion. Ms. B said that one of the suggestions was rotation of tasks on the assembly line.

Ms. B said that after these changes were made, there were no repetitive motion claims filed (not counting, presumably, the claimant's). Although at the CCH the claimant contended that her full range of activities at the employer's plant had resulted in her right-hand condition, Ms. B contended that when the claimant first asserted injury, she identified the injurious activities as having to do with stuffing the bottles or packing (taping of cardboard boxes). Ms. B said that many of these processes were automated and would not require the use of hands. Production logs submitted for the claimant for January and February 2000 show a great number of items processed by her team.

First of all, we agree that neither first-distinct manifestation nor last-injurious exposure applies to this case. While the hearing officer's discussion has somewhat inartfully cited an evidentiary standard that would appear to do with last injurious exposure, a reading of the decision as a whole persuades us that the hearing officer has found that the preponderance of the evidence weighs in favor of the claimant having sustained a repetitive trauma injury during her various tasks for the employer. There are no coverage issues to resolve in this case that require analysis under Section 406.031(b).

And, it is also clear that the hearing officer has found not just "pain" but an injury (right CTS and de Quervain's syndrome) as a result of repetitive activities for the employer. Although the hearing officer could consider that the tasks were rotated, and did not all appear strenuous, this was not binding and conclusive on the matter of causal connection of the claimant's diagnosed injury to her activities at work. The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Section 401.011(36) defines repetitive trauma injury as "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." To recover for an occupational disease of this type, one must not only prove that repetitious, physically traumatic activities occurred on the job, but also must prove that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally. Davis v. Employer's Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). While we recognize that the claimant has the burden of proof, there was no other explanation furnished or argued for the development of the claimant's CTS. The hearing officer's decision on occurrence of an injury and resulting disability is sufficiently supported by the evidence.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Judy L. Stephens
Appeals Judge