APPEAL NO. 010147

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 January 3, 2001. The hearing officer held that the respondent/cross-appellant (claimant) sustained bilateral carpal tunnel syndrome (CTS) through "repetitive use" of her upper extremities, with the date of injury of _____. The hearing officer further found that the claimant had disability for the period from September 1, 2000, through October 1, 2000. The hearing officer found, however, that the claimant did not sustain cervical radiculopathy due to a repetitive trauma injury.

The appellant/cross-respondent (carrier) appeals and asserts that the evidence failed to show any repetitive use and that it only showed that the claimant was engaged in a variety of tasks using her hands. The claimant appeals the determination that she did not have a repetitive cervical radiculopathy.

DECISION

Finding insufficient evidence to support the hearing officer's finding that the claimant was engaged in "repetitive" use of her hands, we reverse and render. We affirm the finding that the claimant did not have a compensable cervical radiculopathy.

The testimony was remarkably sparse, and consisted of 18 total pages of double-spaced transcript. The claimant stated that she worked as a laboratory assistant II for (employer). She testified as to a variety of activities in which she was engaged for 45 to 46 hours a week, on varying shifts. The claimant said she filed and pulled charts, which she said was repetitive because she had to "flip" pages; prepared specimens to send out (which could involve some computer input); made phone calls to doctors' offices; and did some registration of new patients (up to 10 persons a day) and some input of test results, which could be up to 15 patients a day.

The claimant never developed any testimony as to how long she was engaged in any of these tasks, even in the way of an estimate. She said that her input or inquiry was done on two computers, but, essentially, the same tasks were performed on both of them. However, an interview done with two coworkers indicated that a registration or input of information on the computer could take 3 to 5 minutes per patient unless there was an unusually complicated case. Input for each patient might involve up to 30 to 40 specimens a day and 15 to 25 words per person. The coworkers stated that computer work could take 2.0 to 2.7 hours a day but was intermittent and not continuous, and was interspersed with various other tasks. The coworkers said that filing and charting were done primarily on the weekends. The claimant did not indicate, one way or the other, the extent to which she may have worked on weekends.

The claimant said that she began to develop numbness in her hands after one and one-half years of working for the employer. Although she said in her testimony that she

had not done crochet or needlepoint in over 10 years, her transcribed statement to the adjuster clearly indicates that she "does" needlepoint "once in a blue moon" although not frequently.

The claimant's doctor, Dr. W, stated his understanding that the claimant developed bilateral CTS through "continuous, intensive" hand activity and keypunching. In a later report, he attributed her CTS to computer work. Although Dr. W opines that the claimant has a cervical radiculopathy due to the EMG report, Dr. W also noted that an x-ray of the claimant's neck showed degenerative cervical disc disease.

We note, first of all, that the hearing officer could believe from the evidence presented that the claimant's neck problems were not work-related but were degenerative in nature, and, therefore, were an ordinary disease of life. Although the claimant argues in her appeal that an MRI was required and that the Appeals Panel should order the carrier to perform an MRI, we note that this is a medical dispute and that a denial of preauthorization must be appealed through the process outlined in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.305 (Rule 133.305).

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.). At a minimum, proof of a repetitive trauma injury should consist of some presentation of the duration, frequency, and nature of activities alleged to be traumatic. Texas Workers' Compensation Commission Appeal No. 960929, decided June 28, 1996.

In this case, the claimant's testimony is devoid of descriptions of the frequency or duration of activities that she contends were both repetitive and traumatic. While she asserted that filing was "repetitive" because it involved flipping pages, Dr. W does not mention filing at all in his opinion as to repetitive activities undertaken by the claimant. He attributes her CTS to computer use and "intensive and continuous" hand activity. The coworkers' statements, the only ones describing the duration of any computer work, expressly characterize it as intermittent and not continuous at any point, and interspersed with a variety of activities.

While we acknowledge that the hearing officer is the primary fact finder, evidence and testimony which is believed must furnish a basis upon which we may review a finding that use of upper extremities was "repetitious." The record here is devoid of a description of "repetitious" activities. As we have noted before, to simply assert that one performs a wide range of activities of unspecified duration is insufficient to establish either that the

activities were repetitious or traumatic. *See* Texas Workers' Compensation Commission Appeal No. 982649, decided December 23, 1998. Opinion testimony from a doctor does not establish any material fact as a matter of law and is not binding on the trier of fact. American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). Moreover, where an expert's opinion is based on assumed facts that differ materially from actual facts, the opinion is without probative value and cannot support a verdict and judgment. Burroughs Wellcome Company v. Crye, 907 S.W.2d 497 (Tex. 1995).

In considering all the evidence in the record, we 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 reverse and render a decision that the claimant did not prove that she sustained a repetitive trauma injury and that she therefore had no disability. We affirm the determination that the claimant did not have compensable cervical raiculpathy.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge