APPEAL NO. 010383

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 18, 2001. The hearing officer held that the date that the appellant/cross-respondent (claimant) knew, or should have known, that he may have had a work-related repetitive trauma injury was _____; that he failed to give timely notice of this injury within 30 days and had no good cause for delayed reporting; that he was not injured in the course and scope of employment; that he had not made an election of remedies by filing under his regular health insurance; and that he did not "sustain" disability as a result of the alleged injury.

The claimant has appealed all findings against him. The respondent/cross-appellant (carrier) responds that the decision should be affirmed. The carrier appealed the finding that there was no election of remedies.

DECISION

We affirm the hearing officer's decision on all points appealed. The hearing officer did not err in any of his findings on the date of injury, lack of injury, untimely notice, or lack of disability. The decision and order comprehensively and accurately sets out the evidence in the case.

The record lacks what should be an essential part of proof in any claim of repetitive trauma injury. 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 the activities alleged to be traumatic. Texas Workers' Compensation Commission Appeal No. 960929, decided June 28, 1996. Even the claimant's treating doctor, in his testimony, seemed to understand very little of the details or duration of the claimant's work activities. Generalized evidence that one does unspecified activities "a lot" at work offers little to impart an understanding to the trier of fact as to why such activities were either repetitive or traumatic.

We likewise hold that the hearing officer did not err in finding that there was no election of remedies made by the claimant in this case, especially in light of the various health problems he had and the quest for diagnoses that transpired. The hearing officer

is the sole judge of the relevance, 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). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and we affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge