

APPEAL NO. 010983
FILED JUNE 5, 2001

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 April 11, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease, with a diagnosis of bilateral carpal tunnel syndrome (CTS) on _____, and that the claimant had disability beginning on October 1, 2000, through the date of the CCH.

The appellant (carrier) appeals, contending that the claimant had failed to prove she had an "injury"; that because the claimant did not have a compensable injury, she did not have disability; and that the claimant did not timely report the alleged injury. The claimant responds, urging affirmance and pointing out that timely notice to the employer pursuant to Sections 409.001 and 409.002 was not an issue before the hearing officer.

DECISION

Affirmed.

The claimant had been employed "off and on" as a hairstylist or hair dresser by the employer for a number of years. In January 1999 the claimant was involved in a nonwork-related motor vehicle accident (MVA) injuring her neck and right shoulder. There is some documentation of hand numbness related to treatment of her MVA injuries. The claimant had shoulder surgery for the MVA injuries in November 1999 and returned to work in a part-time capacity with certain restrictions in March 2000. The claimant briefly testified that she "constantly [had her] hands up and constantly just cutting with my scissors or weaving." On _____, the claimant went to see her treating doctor, Dr. P, about headaches and mentioned cramping pain in her hands. Dr. P had an impression of bilateral CTS and took the claimant off work. Dr. P's impression was confirmed by electrodiagnostic testing and by Dr. M, the carrier's independent medical evaluation doctor.

The carrier appeals the hearing officer's decision, asserting that the claimant did not sustain a compensable injury, citing cases standing for the proposition that "standing, walking or sitting [are] ordinary functions of life." The hearing officer did not err in finding a compensable repetitive trauma injury. Next, the carrier asserts that there is no evidence of a causal connection and pointing out discrepancies and contradictions in the claimant's testimony and between that testimony and a recorded statement. The carrier also asserts that the claimant was upset about a handbag inspection policy and that the claimant's claim is a retaliatory claim. Those matters are all fact questions for the hearing officer to resolve. Lastly, the carrier asserts that the claimant did not timely report her injury to the employer. Timely notice was not an issue before the hearing officer and we decline to address that matter which was raised for the first time on appeal.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We further conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge