

APPEAL NO. 011184
FILED JULY 12, 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 May 2, 2001. With regard to the issues before him, the hearing officer determined that the appellant (claimant) had not sustained a repetitive trauma injury; that the date of the claimed injury is _____; and that the claimant gave timely notice of her claimed injury to the employer. The hearing officer's determinations on the issues of date of injury and timely notice to the employer have not been appealed and have become final pursuant to Section 410.169.

The claimant appeals some of the hearing officer's findings, asserting that her duties required the "use of both hands on a repetitive basis." The claimant also complains that the hearing officer "modified" most of the claimant's exhibits and that the hearing officer was in a hurry to conclude the case. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a stocker (although she apparently had a title of "Ladies shoe department stockroom manager") with various duties, including stocking shoes, cleaning, labeling merchandise, and assisting in inventory. In evidence are photographs of walls of shoe boxes and the claimant demonstrated how she moved and rearranged the shoe boxes as new stock came in. How many pairs of shoes the claimant had to stock a week is in dispute, ranging from 500 pairs to 5,000 pairs. The claimant was somewhat vague as to when her arms or elbows would bother her and what caused her symptoms.

The hearing officer's determination of an April 14, 2000, date of injury has become final. The claimant first sought medical attention from her treating doctor, Dr. K, a chiropractor, on May 23, 2000. Dr. K is under the impression that the claimant stocks 5,000 pairs of shoes a week "with the help of a stick and hook." Dr. K's opinion is that the claimant has bilateral carpal tunnel syndrome (CTS) which "has been caused by the kind of work she does." The claimant was also diagnosed with CTS by Dr. A. Evidence to the contrary is a report from Dr. P, who states that the claimant's job "is not a highly repetitive one that would place [claimant] at increased risk to develop [CTS]."

The hearing officer comments that while some of the claimant's work is repetitive, "it is not clear if these activities were physically traumatic." 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 a causal link existed between these activities on the job and one's incapacity. Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). We conclude that the hearing officer's decision is supported by the evidence and that the hearing officer did not misapply the law.

Regarding the claimant's appeal that the hearing officer "modified" her exhibits, the hearing officer stated that he was consolidating the reports to eliminate redundancy. We further note that the claimant did not object to the procedure at the time so that point was not preserved for appeal. Similarly, the hearing officer's urging that the parties move along expeditiously was neither preserved for appeal nor constituted reversible error had it been preserved.

There was conflicting evidence presented at the hearing on the appealed issue. The hearing officer weighed the credibility and inconsistencies in the evidence and the hearing officer's determination on the issues is not against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge