

APPEAL NO. 012228
FILED OCTOBER 31, 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 August 21, 2001. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable repetitive trauma injury on _____, and that she had disability, as a result of her compensable injury, from _____, to August 21, 2001. In its appeal, the appellant (self-insured) argues that the hearing officer's injury and disability determinations are not supported by a sufficiency of the evidence and that the claimant's injury was an ordinary disease of life. In addition, the self-insured argues that the hearing officer abused her discretion in admitting the Employer's First Report of Injury or Illness (TWCC-1) into evidence, pursuant to Section 409.005(f). The claimant responds, urging that the hearing officer be affirmed in all respects.

DECISION

Affirmed.

There was sufficient evidence in the record to support the hearing officer's determination that the claimant sustained a compensable repetitive trauma injury on _____. The claimant testified that her employment required her to perform data entry almost constantly in the last year she was employed with the employer, such that by the first week of June, her right hand and wrist became very painful. The claimant then went to a physician, Dr. Y, who diagnosed a ganglion cyst on the claimant's right wrist and opined that it was caused by the claimant's employment. The self-insured introduced records from its independent medical examiner, Dr. N, which showed that Dr. N could not palpate and did not appreciate a ganglion cyst or mass on the claimant's right wrist. The self-insured also introduced an article, from an unknown source, with information about ganglion cysts and how one's genesis is not generally known.

Whether the claimant has sustained a compensable repetitive trauma injury is a factual issue for the hearing officer to decide. There was conflicting medical evidence submitted on the disputed issue. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust.

The record supports the hearing officer's determination that the claimant had disability from _____, through the date of the CCH, August 21, 2001. The claimant testified and the medical records indicated that the claimant's treating doctor, Dr. Y, told the claimant she could not use her right hand and that her employer told her that she could not come back to work until she could use her right hand. The claimant has not worked since _____, when, the hearing officer found, her employer sent her home because it could not accommodate her work restrictions. The hearing officer also found that the claimant has been unable to obtain or retain employment at her preinjury wage due to her right wrist ganglion since July 16, 2001; such a situation exemplifies the legal definition of disability. See Section 401.011(16).

Finally, the hearing officer did not abuse her discretion in admitting the TWCC-1 into evidence. The hearing officer noted the self-insured's objection and stated on the record that she would look to it only within the parameters allowed. Further, it does not appear that any portion of the TWCC-1 was used in supporting the hearing officer's determinations.

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

The true corporate name of the self-insured is **STATE OFFICE OF RISK MANAGEMENT** and the address of its registered agent for service of process is

**STATE OFFICE OF RISK MANAGEMENT
IN CARE OF RON JOSSELET
300 WEST 15TH STREET, 6TH FLOOR
AUSTIN, TEXAS 78711.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge