

APPEAL NO. 012677
FILED DECEMBER 4, 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 October 16, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable neck and right shoulder strain injury on _____ (all dates are 2001 unless otherwise noted), and that the claimant had disability from June 5 through September 6.

The appellant (carrier) appeals, asserting that the chair the claimant was using was not defective, that it was adjustable, that the claimant had a choice of chairs, and that perhaps the claimant did not know how to adjust the chair. The claimant responds, urging affirmance.

DECISION

Affirmed.

It is not entirely clear what the claimant's position was, but apparently her job involved "typing duties" and computer use involving looking at a computer "screen." The claimant testified that she arrived at work at 6:00 a.m. and that she was unable to get a new chair adjusted to an appropriate height, resistance, and position. The claimant said that she complained about the chair to JF, a "CSP," but JF just got her another similar chair which she was also unable to adjust. (JF testified that he did not recall that conversation.) The claimant continued to perform her work but had to work in an awkward position with her "arms up and looking up [at] the computer screen." The claimant testified that she began to notice stiffness at about 10:00 a.m., which continued to get worse. The claimant also testified that when she left work at about 2:30 p.m. she complained about the chair and stiffness to RG, her supervisor. RG testified that the claimant had complained about the chair but had not mentioned an injury.

The claimant subsequently sought treatment on June 6 at a clinic for pain "going up to shoulder and neck." The claimant again treated at the clinic on June 8 and in neither of the clinic notes is a work-related chair incident mentioned, but the claimant was taken off work. The claimant subsequently saw Dr. W, who referred her to a neurologist. Eventually, the claimant was referred to another neurologist who released the claimant to return to work on September 11. The claimant returned to work on September 11 with another employer at a higher wage. The doctors all seem to agree that the claimant sustained some sort of cervical and right shoulder strain due to her work. Dr. W and one of the neurologists agree that the claimant's right arm tremors are not work related and are likely "psychogenic."

The carrier, both at the CCH and on appeal, appears to be arguing that if the chair was not defective and the awkward position the claimant worked in was because the claimant did not know how to adjust the chair, that would somehow relieve the carrier of liability. The carrier also cites some Appeals Panel decisions where we have affirmed the hearing officer's decisions on repetitive trauma injuries where injured workers were "sitting long hours" or sitting in "ergonomically incorrect" chairs, as not compensable. Whether, and to what extent, sitting in an awkward position in a chair results in an injury is largely a factual matter for the hearing officer to resolve. Even if the carrier had proven that the chair did not have a defect and the claimant's sitting in an awkward position was due entirely to the claimant's inability to adjust the chair that would not relieve the carrier of liability because fault is not a factor in workers' compensation liability. While some cases have held that sitting, alone, may not give rise to a compensable injury other cases have affirmed a finding of a compensable injury from computer/key boarding activities based on credible evidence that the injured worker was "hunched over the computer." Texas Workers' Compensation Commission Appeal No. 951764, decided December 11, 1995.

The claimant had the burden of proving she sustained a compensable injury (Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ)), and whether she did so was a question of fact for the hearing officer to decide. We believe that the claimant's testimony together with the medical evidence is sufficient to support the hearing officer's decision under our standard of review. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JIM ADAMS
450 GEARS ROAD, SUITE 500
HOUSTON, TEXAS 77067.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge