APPEAL NO. 013050
FILED JANUARY 28, 2002

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 November 30, 2001. In resolving the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease on _____; that the appellant (carrier) was not relieved from liability because the claimant timely notified her employer of her injury on the date of the injury, and that the claimant had disability from May 8 through November 30, 2001, excepting a three-day and a two-week period during which she returned to work at light duty for the employer. The carrier appealed on sufficiency grounds, seeking reversal. The claimant responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury in the form of an occupational disease on _____; that the carrier was not relieved of liability because the claimant timely notified her employer; and that the claimant had disability from May 8 through November 30, 2001, excepting a three-day and a two-week period during which she returned to work at light duty for the employer. The parties presented conflicting evidence on the issues, though the issue most contested was the cause of the claimant's bilateral carpal tunnel syndrome, with the claimant testifying it was caused by her work and the carrier asserting it was caused, if at all, by her weight gain. We have reviewed the issues and conclude that they involved fact questions for the hearing officer. The hearing officer resolved those questions in favor of the claimant. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviewed the record and resolved what facts were established. We conclude that the hearing officer's determinations are sufficiently supported by the record and 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.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE I
AUSTIN, TEXAS 78701.

Terri Kay Oliver
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

DISSENTING OPINION:

I dissent, because the evidence is grossly insufficient to support the finding that the claimant sustained an occupational disease in the form of a repetitive trauma injury.

I am struck by reviewing the transcript and finding essentially no indication of what the claimant does, how she does it, and how often. There is no "common knowledge" of the various types of jobs and their duties. Generalized testimony that she uses her hands "all day" in a variety of tasks provides no basis upon which a trier of fact can believe, as the hearing officer states, that her job involves "constant, repetitive use of her wrists." Based upon my review of the testimony, this statement can be characterized as speculation. The claimant, in her direct case, stated that she opened mail, sorted mail, and did some looking up of data on a computer , which could involve typing in a name and then using a single button to page back and forth between screens. Unlike other cases we have seen, the claimant in this case first felt a symptom, hand pain, on _____, the day she reported her injury; she testified as to no gradual numbness, tingling, or discomfort prior to that date, except with respect to her injured back (from a compensable injury the year before).

Asked on direct examination how many checks she processed in this manner on the average day, the claimant said she did not recall and would not guess. Asked on cross-examination how long it would take to process a check, she also did not recall

and would not guess. (The hearing officer asked this question again and received the same response.) When asked a third time by her attorney, she guessed that it would not take as long as a minute. She agreed with her attorney's questions asking if she worked "continuously." Asked on cross-examination specifically what she felt caused her injury, she stated, "I believe it's all–overall what I do and from doing it for so many years." Later on, she stated that she believed it was because she sat in a posture that was not ergonomic. However, her treating doctor seemed under the impression, in forming his opinion, that the claimant did extensive data entry and other typing, and that she had to "constantly"grab large bundles of mail. In any case, the history of an injury as reported by a claimant and contained in the medical reports does not necessarily compel a finding that an injury occurred as recited in the history. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ).

We have stated that performance of a variety of activities over a day does not meet the burden of proving repetitive or cumulative trauma. See Texas Workers' Compensation Commission Appeal No. 950868, decided July 13, 1995; Texas Workers' Compensation Commission Appeal No. 002867, decided January 25, 2001; and Texas Workers' Compensation Commission Appeal No. 010147, decided March 5, 2001.

At a minimum, proof of a repetitive trauma injury should consist of some presentation of the duration, frequency, and nature of activities alleged to be traumatic. Texas Workers' Compensation Commission Appeal No. 960929, decided June 28, 1996. It is not hard to make such a minimal case, but it is assuredly not made when an injured worker cannot or will not hazard a guess as to the frequency or duration of any given activity. Given the lack of such evidence here, the authoritative articles presented by the carrier take on greater significance than they might otherwise have.

Because I believe that the evidence is insufficient as a matter of law, amounting to no more than a mere scintilla, I would reverse and render.

Susan M. Kelley
Appeals Judge