

APPEAL NO. 020696
FILED MAY 7, 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 February 28, 2002. The hearing officer determined that (1) the respondent (claimant) sustained a new and distinct, compensable repetitive trauma injury, bilateral carpal tunnel syndrome (CTS), on _____; and (2) the claimant had disability beginning on October 18, 2001, and continuing through December 9, 2001. The appellant (carrier) appeals the determinations on sufficiency grounds. No response was filed by the claimant.

DECISION

Affirmed.

COMPENSABLE INJURY

The hearing officer did not err in determining that the claimant sustained a new and distinct, compensable repetitive trauma injury on _____. The carrier contends that the claimant suffered a continuation of a prior compensable injury, which included bilateral CTS, and that the evidence is not sufficient to support a finding of a new and distinct, compensable repetitive trauma injury on _____. In support of its position, the carrier argues that (1) the claimant's job did not expose her to repetitious, physically traumatic activities; (2) the evidence does not establish an aggravation of her preexisting condition; (3) the claimant failed to establish, by expert medical evidence, a causal relationship between her employment and her new injury; and (4) the claimant's medical evidence, with regard to whether the claimant sustained a new compensable injury or a continuation of a prior injury, does not satisfy the requirements for admissibility of expert evidence set out in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786 (1993) and E.I. du Pont de Nemours & Co., Inc. v. Robinson, 923 S.W.2d 549 (Tex. 1995). The carrier asserts error in the admission of medical opinions from the claimant's treating doctor, citing Daubert and Robinson, and the hearing officer's consideration of such evidence in finding a new and distinct, compensable repetitive trauma injury.

Although the claimant's earlier 1998 injury was initially diagnosed and treated as CTS, it was determined to be ulnar nerve entrapment, for which she had surgery.

Whether the claimant sustained a new and distinct, compensable repetitive trauma injury on _____, or a continuation of a prior injury was a question of fact for the hearing officer to resolve. We note that the claimant did not assert, as the basis of her claim, an aggravation of her prior compensable injury; therefore, evidence of an enhancement, acceleration, or worsening of her preexisting condition was not required in this case. Moreover, we have routinely held that expert medical evidence is not required to establish the cause of CTS but that the claimant's testimony, if found credible, may be sufficient. See Texas Workers' Compensation Commission Appeal No. 961008, decided

July 1, 1996; and Texas Workers' Compensation Commission Appeal No. 002841, decided January 18, 2001. With regard to the admissibility of expert evidence, we have held that Daubert and Robinson do not provide a basis for excluding opinions in an administrative workers' compensation proceeding; rather, the factors advanced by Daubert and Robinson may be considered by the fact finder in making credibility determinations. Texas Workers' Compensation Commission Appeal No. 991964, decided October 25, 1999. Accordingly, the hearing officer did not err in admitting or considering the claimant's medical evidence. In view of our prior holdings and the evidence presented, we cannot conclude that the hearing officer's determination is 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 (Tex. 1986). Although different inferences could be drawn, the decision that the claimant's activities constituted repetitive trauma has support in the record.

DISABILITY

The hearing officer did not err in determining that the claimant had disability beginning on October 18, 2001, and continuing through December 9, 2001. This was a question of fact for the hearing officer to resolve. In view of the evidence presented, we cannot conclude that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**C.T. CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Susan M. Kelley
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge