

APPEAL NO. 020718  
FILED MAY 8, 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 26, 2002. He held that the appellant (claimant) did not prove a repetitive trauma injury with a date of injury of \_\_\_\_\_. He further held that from an undisputed \_\_\_\_\_, injury, any inability to work after July 27, 2001, was not due to that injury, and the claimant therefore did not have disability after that date.

The claimant has appealed both adverse determinations; the respondent (carrier) responds that they are supported by the record and that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

The claimant sustained a bilateral upper extremity tendinitis injury on \_\_\_\_\_; was off work due to the injury; and then returned to modified duty on May 21. She contended that repetitive overhead reaching while working light duty caused neck and shoulder injuries, with the date of injury being \_\_\_\_\_. She stated that she performed a variety of jobs in those ten days, not all of which required overhead reaching. Testimony about the duration of such activities from day-to-day that were alleged to be traumatic and repetitive was scant, however. A supervisor testified that even such overhead activities were not of great duration and were in the context of and combined with working with similar materials at lower levels. Although right-handed, the claimant contended that her left extremity hurt worse. Medical evidence conflicts; some medical opinions concluding that a new injury occurred while the claimant was working light duty also recite a generalized history that the claimant's activities at work were repetitive.

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 that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally. Davis v. Employer's Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). 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.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon

review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer is not required to accept as true medical opinion any more than the testimony of nonmedical witnesses. An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Because he did not accept that the claimant sustained a repetitive trauma injury, and a large portion of the medical evidence after July 27 attributes the claimant's diminished functioning to the neck and shoulder pain, his determination that the claimant's tendinitis would not alone have caused disability in excess of July 27, 2001, is supportable. We affirm the decision and order.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

---

Susan M. Kelley  
Appeals Judge

CONCUR:

---

Elaine M. Chaney  
Appeals Judge

---

Roy L. Warren  
Appeals Judge