APPEAL NO. 021416
FILED JULY 16, 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 (CCH) was held on May 1, 2002. The hearing officer determined that the respondent/cross-appellant (claimant) had not sustained a compensable repetitive trauma injury on _____, but gave timely notice of this injury to her employer. The hearing officer held that the claimant was unable to work beginning _____, and continuing through August 31, 2001, but that due to the lack of a compensable injury there was no disability; and that the claimant did not make an election of remedies by using her regular health insurance.

Both parties have appealed. The appellant/cross-respondent (carrier) appeals the date of injury and the claimant responds that this decision is supported by the evidence. The claimant argues that the determination that the claimant did not have a compensable injury and disability is against the great weight and preponderance of the evidence and is based upon improperly admitted evidence. The carrier responds that these determinations are correct. There is no appeal of the election-of-remedies finding.

DECISION

We affirm the hearing officer's decision.

ADMISSION OF EVIDENCE

The claimant objected to admission of a written report of Dr. P as not timely exchanged. However, the parties agreed that the identity of Dr. P as a witness had been timely disclosed. We cannot agree that the hearing officer erred by allowing the doctor to testify, or by admitting his report. Although it was argued that the report could have been sought earlier from Dr. P, the report essentially tracked his live testimony and any error would be harmless error. There was no basis for excluding Dr. P as a witness since his identity had been timely disclosed in time for the claimant to seek further discovery to ascertain the substance of his testimony. The carrier satisfied the hearing officer that the written report was timely requested and then promptly exchanged upon receipt. The hearing officer did not abuse her discretion in admitting the report.

DATE OF INJURY

There was a controversy actually litigated at the CCH concerning as to whether the date reflected on the claimant's initial medical report was ____13th or ____18th. Although the date appears to be the "18th," it is distorted and could represent a handwritten "closing" of the open prongs of a "3." The hearing officer resolved the dispute in favor of the 13th, which we agree is supported by the evidence. We note that

there was little to support an _____ date of injury as anything more than a starting point for an array of symptoms, and the claimant, who self-treated herself for what she concluded was arthritis, flatly denied any awareness that her condition was related to her employment.

OCCURRENCE OF AN INJURY AND DISABILITY

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 assessed the evidence and conflicting account of the amount of time spent typing. She also considered that the claimant, twice and one time for a duration of over a year, occupied a supervisory position with little keyboard work. We agree that carpal tunnel syndrome may be proven by testimony, but a trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this is the case here, and affirm the decision and order of the hearing officer on all appealed points.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

CONCUR IN THE RESULT:

_____
Gary L. Kilgore
Appeals Judge