APPEAL NO. 021943
FILED SEPTEMBER 19, 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 July 11, 2002. The hearing officer determined that the respondent (claimant) sustained a repetitive trauma injury to his cervical area. The appellant (carrier) has appealed the sufficiency of the evidence to support this finding. There is no response from the claimant.

DECISION

We reverse and render. The evidence is insufficient to support a finding that the claimant sustained a repetitive trauma injury to his neck because of his employment, as opposed to experiencing an ordinary disease of life.

The claimed injury was a neck injury. The claimant testified that he had worked for two and one-half years as an "offset pressman." The testimony about the claimant's activities was general and fairly short. His description of his job was not entirely clear, but the claimant apparently worked around a press in which ink was loaded from the top and the bottom. The printing process involved colored ink and documents for some colleges in the area as well as a want-ad pamphlet. The claimant said he had to "preset" the ink but there is no more detailed description in the record as to what this involved other than to "put" ink in the top and bottom of the press. The claimant said he had to "hurry" up and down a ten-foot ladder during the operation and that he had to keep "moving." The claimant said he performed a lot of physical activity.

The claimant also said that sometimes the roll of paper being printed on would break and a new roll would have to be installed and then fed into the press by hand. How often this occurred or what precisely it entailed was not described. The claimant emphasized he had to work around heat, and began to be bothered by headaches and dizziness in October 1999. The claimant said (and the plant manager did not disagree) that work hours could be long. The claimant said he typically worked twelve hours a day, Monday through Thursday, with some overtime that could involve Friday and Saturday work.

The claimant made clear that his primary problem, and the one he reported to his supervisors, was headaches, and he did not realize before it was suggested to him by his doctors that his headaches were caused by a neck problem. He went to the emergency room twice, on October 15 and October 25. When asked by the hearing officer what the diagnosis of his problem was, he responded that it was repetitive trauma. However, the claimant also agreed that one doctor may have told him he had stenosis in his neck.

An MRI showed multiple levels of stenosis with bony overgrowth at levels of protrusion, stated as an impression of cervical disc disease. A progress note from Dr. Cannon Dr. C dated December 3, 1999, indicated that the claimant requested a note stating that his illness was due to his job, and that his job entailed walking up a straight ladder as a printer. Dr. C wrote on December 13, 1999, that a specialist to whom the claimant was sent felt that the claimant had a severe strain superimposed on cervical degenerative disease "most likely" due to repetitive movements occurring since changing to new working equipment. The letter from this specialist does not recite a mechanism of injury, notes that there is no radiating pain to the upper extremities, and includes an observation about a neck injury being related to a change in position at work. However, when the claimant was asked to explain the reference to a "new position," he answered the question in terms of new location in the plant, nearer to a heat source, rather than any new physical position he had to assume. An evaluation by an occupational medicine specialist in December 1999 noted that the claimant's complaints are of "questionable etiology" and noted that the claimant has hyperthyroidism. Another doctor who treated the claimant in early 2001 identified the cause of the headaches as vascular (and not his disc disease), possibly due to working around heat.

The record indicated that the carrier apparently accepted liability for a lumbar injury, although the date of this injury on a Report of Medical Evaluation (TWCC-69) is shown as _____. This report links the lumbar injury to repetitive ladder climbing. A medical evaluation from May 2000 attributes the lumbar injury to lifting a roll of paper in _____ and further recorded that the claimant had lumbar surgery in April 2000. The medical records from a separate line of doctors who apparently treated the lumbar injury relate no complaints of neck pain; the claimant was released to full duty in September 2000.

Because the definition of occupational disease in Section 401.011(34) specifically excludes an ordinary disease of life, it is important that a claim that there has been a repetitive trauma injury should consist of some presentation of the duration, frequency, and nature of the activities alleged to be traumatic. Texas Workers' Compensation Commission Appeal No. 012703, decided December 19, 2001; Texas Workers' Compensation Commission Appeal No. 960929, decided June 28, 1996. 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.). Where the record fails to contain a description of the activities alleged to repetitively impact the injured area, and there is only generalized testimony about a variety of activities performed frequently, the evidence is insufficient to support a determination of repetitive trauma. *See* Texas Workers' Compensation Commission Appeal No. 010147, decided March 6, 2001; *See also* Texas Workers' Compensation Commission Appeal No. 982649, decided December 23, 1998 (failure to connect baggage handling activities to claimed cervical

injury found to be reversible error). The facts set out in the history of a medical record would not be good evidence to prove that an accident in fact occurred. Presley v. Royal Indemnity Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). However, in this case, not even the medical records set out a history that pinpoints activities alleged to be repetitive or traumatic. The fact that the hearing officer's decision includes no description as to what he believed caused a repetitive trauma injury to the neck highlights the insufficiency of the evidence in the record in this point.

As we observed in Texas Workers' Compensation Commission Appeal No. 001621, decided August 28, 2000, a general description of activities performed without evidence of what or how the activities caused the claimed injury will not support a finding of repetitive trauma. The fact that one may experience pain at work does not mean that the pain arose from activities originating in the work. A description of what tasks are performed is essential because the tasks performed in many jobs cannot be said to be a matter of common knowledge.

While we agree that the hearing officer is the sole finder of fact, there must be facts in the record to find. The decision in this case that the claimant sustained a repetitive trauma injury to his neck is against the great weight and preponderance of the evidence, and we reverse and render a decision that the claimant failed to prove that he sustained a repetitive trauma injury arising from the course and scope of his employment.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY f/k/a TEXAS WORKERS' COMPENSATION INSURANCE FUND** and the name and address of its registered agent for service of process is

MR. RUSSELL OLIVER, PRESIDENT
221 WEST 6th STREET
AUSTIN, TEXAS 78701.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Margaret L. Turner
Appeals Judge