APPEAL NO. 022335
FILED OCTOBER 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 (CCH) was held on August 21, 2002. The hearing officer determined that the date of the alleged occupational disease/repetitive trauma injury was _____; that the appellant/cross-respondent (claimant) timely reported the injury to her employer; but that the evidence was insufficient to prove that the problems with her shoulder and neck arose out of the course and scope of repetitive activities at her employment. The respondent/cross-appellant (carrier) appealed the timely notice and date of injury findings. The claimant appealed the decision that she did not prove a repetitive trauma injury, arguing that the hearing officer applied an extraordinary standard of proof in so holding. The claimant points out that no evidence was offered of an alternative causation. Each party responded to the appeal of the opposing party.

DECISION

We affirm the hearing officer's decision.

The claimant asserted a neck and shoulder injury due to work. Description of the nature and duration of the claimant's tasks at work was scant. When asked what her doctor told her had caused her injury, the claimant replied "Well, someone that sits at a desk and talks on the phone a lot while I'm typing and writing and just a combination of this chair that I'm sitting in and the position that I'm sitting in." The claimant said that she no longer used a headset but instead held the phone to her ear while she talked on it. When asked on direct testimony and cross examination, specifically, if she ever held the phone by resting it on her shoulder and holding it with her neck, she said that she could not do this. It wasn't until asked about a report of Dr. P describing her as holding the telephone in such a manner that she began to "think" that she did.

The claimant said that Dr. P was the first doctor she consulted about shoulder pain who associated it with her work activities and that this happened on _____. Dr. P's first report stated that the claimant performed data entry and various office activities such as lifting. Many of Dr. P's subsequent reports attribute the claimant's overuse syndrome to "data entry". The claimant said that she had consulted with her family physician in September and his records indicated that she complained of increased pain while holding the telephone. However, she said that no connection with her work activities was brought up nor did it occur to her that this was the cause.

The claimant has the burden of proving that an injury occurred, the carrier does not have the burden of disproving it. 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. Employers 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.

This is not a "higher standard" of evidence; because there is no common experience in various jobs that workers might perform, testimony about the activities alleged to have caused injury is essential. 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. 021943, decided September 19, 2002; Texas Workers' Compensation Commission Appeal No. 010147, decided March 6, 2001; and 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 Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). Expert evidence based upon inaccurate underlying facts cannot support a verdict. *See* Burroughs Wellcome Company v. Crye, 907 S.W.2d 497 (Tex. 1995); Texas Workers' Compensation Commission Appeal No. 990591, decided April 30, 1999. While Dr. P premised his conclusions on an understanding that the claimant did much data entry, this was different from the causation that she testified to at the CCH.

We have reviewed the evidence and find that the hearing officer's decision on occurrence of an injury, date of injury, and notice to the employer are sufficiently supported by the record.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Michael B. McShane
Appeals Judge