APPEAL NO. 030419
FILED MARCH 14, 2003

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 January 13, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on or about _____, and that she has not had disability. The claimant appealed, asserting that the hearing officer applied the wrong legal standard in evaluating the evidence in this case. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and rendered.

The claimant had the burden to prove that she sustained a compensable repetitive trauma injury and had disability. We have previously stated that where the subject of an injury is not so scientific or technical in nature to require expert evidence, lay testimony and circumstantial evidence may suffice to establish causation. Texas Workers' Compensation Commission Appeal No. 022742, decided December 10, 2002; Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992.

In Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992, the hearing officer determined that the claimant in that case sustained a repetitive trauma injury to her back while working as a driver for a parcel delivery service. The Appeals Panel cited Texas court decisions; stated that the courts have held that to recover for a repetitive trauma injury, the employee must not only prove that the repetitious physically traumatic activities occurred on the job, but must also show that a causal link existed between the traumatic activity and the injury, that is, that the disease must be inherent in the type of employment as compared with employment generally; noted that generally, injury and disability may be established by lay testimony of the claimant alone; said that there is a narrow exception requiring expert testimony where a claimant asserts that his injury aggravated cancer or a disease, or when an injury to a specific part of the body is alleged to have caused damage to another unrelated body part; rejected the carrier's argument that the claimant's surgeon's statement that her work-related activities could have caused a ruptured disc was insufficient medical evidence and that only expert medical evidence was probative of such causation; and affirmed the decision of the hearing officer. When expert medical evidence is required, the form of the expert medical evidence is not as important as is the substance of it and the use of "reasonable medical probability" is not required. Texas Workers' Compensation Commission Appeal No. 951417, decided October 9, 1995.

The hearing officer noted specifically in her Statement of the Evidence that:

> Although the mechanism of injury which [c]laimant credibly described appears to be consistent with the thoracic outlet syndrome with which [c]laimant eventually was diagnosed, and although all doctors who have examined and treated [c]laimant appear to be of the opinion that her condition was caused, or exacerbated, by her repetitive work-related activities, the record of the [CCH] is entirely devoid of evidence which would tend to indicate that an injury of this type is inherent in [c]laimant's employment as a dental hygienist, or present to an increased degree in such employment, an evidentiary showing which must be present in the case of an occupational disease, including a repetitive trauma injury such as [c]laimant has alleged. . . . The [h]earing [o]fficer further observes that since the alleged mechanism of injury probably is not within the realm of knowledge of members of the general public, and the medical documentation which purports to establish the causation of [c]laimant's injury falls far short of the stringent standard of proof set for by the Texas Supreme Court in [Merrill Dow Pharmaceuticals, Inc. v. Havner, 953 S.W.2d 706 (Tex. 1997)].

These statements indicate that the hearing officer is requiring expert medical evidence to establish causation, which is a higher standard of proof than is required. Texas Workers' Compensation Commission Appeal No. 991195, decided July 16, 1999. We have previously stated that where the subject of an injury is not so scientific or technical in nature as to require expert evidence, lay testimony and circumstantial evidence may suffice to establish causation. Appeal No. 92187, *supra*. In the case at issue, expert testimony is not required as we do not consider the question of causation to be beyond common knowledge. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). The claimant testified at length and, according to the hearing officer, credibly, as to what work activities caused her symptoms.

Regarding the hearing officer's statement that the claimant failed to show that her injury is inherent in the type of employment she did, or present to an increased degree in such employment, we again find that the hearing officer applied the wrong legal standard. Section 401.011(16) 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." In Texas Workers' Compensation Commission Appeal No. 91026, decided October 18, 1991, the Appeals Panel extensively reviewed Texas court cases concerning causation in occupational disease claims and stated:

> Whether the issue of causation is framed in terms of the disease being indigenous to the work or present in an increased degree [citation omitted], as urged by appellant, or that the disease must be inherent in that type of employment [citation omitted], or but for the employment,

> would claimant have suffered the harm [citation omitted], what is required is evidence of probative force of a causal connection between the employment and occupational disease [citation omitted].

See also Texas Workers' Compensation Commission Appeal No. 961008, decided July 1, 1996, where the Appeals Panel discussed and considered Texas case law on repetitive trauma injuries and stated that "it is not required that it be proven the disease is inherent in or present in a greater degree when the evidence sufficiently proves that repetitive traumatic activities occurred on the job and there is a causal link between the activities and the harm or injury." In the instant case, the claimant's testimony and uncontradicted medical evidence provided overwhelming proof to support the claimant's claim.

As to the issue of disability, the hearing officer found that since April 26, 2002, the claimant has been unable to obtain and retain employment at wages equivalent to the wage she earned prior to approximately _____, but that since her injury was not compensable she did not have disability. Because we find that the claimant did sustain a compensable repetitive trauma injury on or about _____, we likewise find that the claimant had disability beginning on April 26, 2002, and continuing through the date of the CCH.

The hearing officer's decision and order that the claimant did not sustain a compensable repetitive trauma injury on or about _____, and that she did not have disability is reversed and a new decision is rendered that the claimant did sustain a compensable repetitive trauma injury on or about _____, and that she did have disability beginning on April 26, 2002, and continuing through the date of the CCH.

The true corporate name of the insurance carrier is **HARTFORD INSURANCE COMPANY** 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.

_____
Daniel R. Barry
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge