APPEAL NO. 031216
FILED JUNE 24, 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 April 22, 2003. The hearing officer resolved the disputed issues by deciding that the date of injury is _____; that the respondent (claimant) sustained a compensable injury in the form of an occupational disease; that the claimant had disability beginning on April 23, 2002, and continuing through the date of the CCH; and that the appellant (carrier) is not relieved of liability under Section 409.002 because the claimant timely notified the employer pursuant to Section 409.001. The carrier appealed, disputing the determinations on sufficiency of the evidence grounds. The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant attached a consultation report from a medical doctor dated May 15, 2003, to her response. In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that is offered for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the document attached to the claimant's response, and it will not be considered.

The claimant had the burden to prove that she sustained a compensable injury, that she gave timely notice of injury to her employer, and that she has had disability. The claimant claimed that she sustained a repetitive trauma injury as a result of performing her work activities for the employer. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36). Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. Section 409.001(a) provides that, if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. Section 401.011(16) defines "disability" as "the inability because of

a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage."

It is well settled that the claimant's testimony alone can prove disability (Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992), and that objective medical evidence of disability is not required (Texas Workers' Compensation Commission Appeal No. 91083, decided January 6, 1992). Additionally, we have held that the cause of carpal tunnel syndrome (CTS) can be established by the testimony of the claimant alone, if believed by the hearing officer. Texas Workers' Compensation Commission Appeal No. 961008, decided July 1, 1996. The hearing officer noted that the claimant's job required her to perform repetitious and physically traumatic activities. Further, in correspondence dated September 11, 2002, the claimant's treating doctor stated that the claimant's job description shows she does repetitive motion with hand and wrists and this type of job is consistent with CTS and in his opinion did cause the injury to her hands and wrists as well as elbow regions.

Conflicting evidence was presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. We conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge