APPEAL NO. 031546
FILED JULY 29, 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 was held on May 14, 2003. The hearing officer determined that the appellant/cross-respondent (claimant) had not sustained a compensable occupational disease (repetitive trauma) injury on _____, and did not have disability.

The claimant appeals, contending that the hearing officer applied the wrong standard in the application of what is physically traumatic. The respondent/cross-appellant (carrier) filed a conditional appeal regarding one of the hearing officer's findings of fact. The carrier responds to the claimant's appeal urging affirmance. The file does not have a response to the carrier's appeal.

DECISION

Affirmed as reformed.

The claimant testified that her job was to take clothes out of boxes, put them on hangers if not already on hangers and hang the clothes on racks. There was testimony how many pieces of clothing were handled and if they were heavy winter clothes or light summer clothes. The claimant testified that she woke up on _____, with arm and hand pain and numbness. The claimant went to a doctor and was eventually diagnosed with right carpal tunnel syndrome.

The hearing officer commented that the claimant "undoubtedly handled many pieces of clothing in a day everyday" but that activity, while being repetitious, was not physically traumatic. The claimant objects to the hearing officer's finding that the activity was not physically traumatic citing Section 401.011(36).

Section 401.011(36) provides that a repetitive trauma injury means 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. Although the claimant cites a number of Appeals Panel decisions where other hearing officer's have found repetitious physically traumatic activities compensable, we cannot conclude that the hearing officer, in this case, used an incorrect standard, or that his determinations were not supported by the evidence. Whether a certain activity is physically traumatic is a question of fact and it is the hearing officer who, as the sole judge of the weight and credibility of the evidence, decides what facts have been established. In that we are affirming the hearing officer's determination that the claimant did not sustain a compensable repetitive trauma injury the claimant cannot by definition in Section 401.011(16) have disability.

The hearing officer in Finding of Fact No. 5 stated:

> 5. Due to the compensable injuries, Claimant has been unable to obtain and retain employment at her pre-injury wages from July 23, 2002, through March 7, 2003.

The carrier appeals this finding on the basis that the claimant did not have disability as defined in Section 401.011(16). The hearing officer makes clear in his discussion, other findings of fact, conclusions of law, and the decision and order that the claimant did not have disability. We believe that the hearing officer meant to say "Due to the claimed injuries . . . ." We so reform Finding of Fact No. 5 to substitute the word claimed for the word compensable.

We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

LEO MALO
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Edward Vilano
Appeals Judge