APPEAL NO. 031672
FILED AUGUST 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 May 20, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable (right upper extremity) injury on _____, and that the claimant had disability from July 20, 2002, to the date of the CCH.

The appellant (carrier) appeals, contending that claimant was not in the course and scope of her employment at the time of the injury, that the claimant did not sustain a repetitious physically traumatic injury, and that claimant did not have disability because the claimant had been released to light duty. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant was employed as a cashier/stocker at a convenience store. Her shift hours were from 6:00 p.m. to 1:00 a.m., 35 hours a week. Part of the claimant's duties included "breaking down" empty boxes. The preponderance of the evidence indicates that the claimant had been counseled not to work "off the clock." The claimant testified that on _____, she clocked out at about 12:57 a.m. and that as she was leaving she noticed three boxes that had not been broken down. The claimant said she thought "nothing is going to happen to me" and proceeded to break down the boxes and felt a sharp burning pain in her right upper arm. The claimant said she put a cold item on her arm and when it did not get better she went to a hospital emergency room (ER) where she was treated and released to light duty. The ER record supports the claimant's testimony. The claimant said that she called the employer and asked for light duty but was told there was none available. The claimant subsequently began treating with Dr. D who took the claimant off work altogether on October 16, 2002.

COURSE AND SCOPE

The carrier's first contention is that since the claimant had clocked out and had been warned not to work off the clock, the claimant was not in the course and scope of her employment when she felt the sharp pain on _____. We do not find the cases cited by the carrier, involving voluntary off duty athletic activities and activities after the employee's employment had been terminated to be persuasive. Instead we rely on Texas Workers' Compensation Commission Appeal No. 001821, decided September 19, 2000, a case where the employee had clocked out and momentarily returned to the employer's premises to give some car keys to her boyfriend, to be controlling. In that case, and other cases cited therein, the Appeals Panel has held that a momentary deviation from the employment does not necessarily take a claimant out of

the course and scope of employment. In this case, the claimant had clocked out, saw some boxes which she had forgotten to break down and momentarily stopped to break down the boxes, an activity which was in furtherance of the affairs and business of the employer. The reason the claimant had been instructed not to work off the clock was to avoid the payment, or liability, for overtime, rather than to preclude exposure to events such as suffered by the claimant. We perceive no error by the hearing officer in determining that the claimant was furthering the affairs of the employer by breaking down the boxes.

REPETITIVE TRAUMA

The claimant claims an occupational disease repetitive trauma injury (*see* Sections 401.011(34) and (36)). Although the hearing officer mentions activities of "lifting, carrying, and pulling" and makes a finding that the claimants "work activities required physically traumatic use of her upper extremities" and the claimant makes some reference to bilateral shoulder pain in the months before _____, the great weight and preponderance of the evidence is that the claimant suffered a specific incident injury breaking down the three boxes in the early morning of _____, rather than any kind of repetitive trauma injury caused by breaking down five or six (or even 15 or 16) boxes a day for four months. As we have frequently noted we will uphold the hearing officer's judgment if it can be sustained on any reasonable basis supported by the evidence. Daylin, Inc. v. Juarez, 766 S.W.2d 347, (Tex. App-El Paso 1989, writ denied). In this case the hearing officer's decision that the claimant sustained a compensable injury on _____, is supported by the evidence of a specific event injury breaking down boxes on _____.

DISABILITY

The claimant testified, and the ER record supports, that the claimant was released to light duty on _____. The claimant's uncontradicted testimony was that she called the employer and asked for light duty and was told that none was available. The Appeals Panel has frequently noted that a release to light duty is evidence that the effects of the injury continue and that disability exists. Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991. Further, disability may be proven by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). Under the circumstances we find no error in the hearing officer's disability determination.

We have reviewed the complained-of determinations and 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).

We affirm the hearing officer's decision and order.

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

ROBIN MOUNTAIN
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Margaret L. Turner
Appeals Judge