APPEAL NO. 033192
FILED FEBRUARY 3, 2004

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 November 5, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable repetitive trauma injury on _____. The appellant (carrier) appealed, arguing that the hearing officer's "conclusion of law and finding of fact supporting his determination of causation fails both legally and factually." The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered, and reformed.

EVIDENTIARY MATTERS

The carrier contends that in the Evidence Presented section of the decision, the hearing officer inaccurately states that no witnesses testified on behalf of the carrier. The record reflects that two witnesses testified, EH and Dr. S. We reform that portion of the hearing officer's decision to state that EV and Dr. S testified.

Additionally, we note that in the Evidence Presented section of the decision, the hearing officer inaccurately lists that both pages of the following exhibit were admitted: Claimant's Exhibit No. 3 (Medical report 6/17/03 & 10/14/03 Dr. D). The record reflects that the hearing officer marked Claimant's Exhibit No. 3 to show page 1 and 2 at the bottom right of each page. Page 1 was admitted and page 2 was not admitted. Accordingly, we reform that portion of the hearing officer's decision to state that Claimant's Exhibit No. 3 (Medical report 6/17/03, page 1, (Dr. D)) was admitted.

INJURY

The claimant alleged that she sustained a compensable repetitive trauma injury on (alleged date of injury), as a result of the repetitive job duties she performed in the course and scope of her employment with the employer. The claimant testified that she began to have problems with her hand on _____, and that she reported her injury to her employer on that same date. The claimant sought medical treatment with Dr. D for her hand and wrist problems on (alleged date of injury). The claimant presented medical evidence to support her claim that she sustained a compensable repetitive trauma injury due to her repetitive job duties. The carrier presented evidence and testimony from Dr. S and EH, a vocational rehabilitation specialist, to support its position that the claimant's job duties were not repetitive or traumatic.

The issues in dispute in this case were: "What is the date of injury?" and "Did the claimant sustain a compensable repetitive trauma injury, with the date of injury of June

7, 2003?" The hearing officer found that the claimant knew or should have known that her claimed tenosynovitis condition was work related on _____, and that on _____, the claimant's bilateral tenosynovitis condition was aggravated as a result of repetitive use of the keyboard and mouse in the course and scope of employment. In so finding that the claimant's condition was aggravated, the hearing officer noted that "once that condition came into existence her work activities would aggravate that condition. Claimant's tenosynovitis came into existence before _____, and was aggravated by her work activities on _____."

In its appeal, the carrier argues that the evidence does not support the hearing officer's injury determination in this case because there was "no testimony, no evidence, no inference and not even a suggestion by the claimant or her physician or any other source that the claimant had tenosynovitis prior to work." The carrier argues that the claimant asserted that the work had caused her tenosynovitis condition, not that the work aggravated her condition. We agree.

A medical report dated (alleged date of injury), reflects that the claimant's treating doctor, Dr. D, opined that she had "a new injury, unrelated to her previous neuropathy, probably from repetitious finger motions with her specific work activity and has developed bilateral extensor tenosynovitis that currently requires no surgery." The carrier's doctor, Dr. S, testified that he reviewed her medical records and a job analysis video, and he disagreed with Dr. D's opinion that the claimant's tenosynovitis injury was related to her job. Dr. S opined that the claimant's prior carpal tunnel syndrome injury in 1997, is not related to the tenosynovitis. Furthermore, Dr. S testified that tenosynovitis might develop from a one-time incident of trauma. Based on Dr. S's testimony of trauma, the hearing officer posed a hypothetical question to Dr. S by asking that if the claimant had an incident that created her condition, would the continued typing and work worsen her condition. Dr. S responded to the hearing officer's question in the affirmative. The hearing officer then asked that if "once the [tenosynovisits] symptom developed, the continued typing, whatever may have been the cause of this symptom developing initially, if it once was developed, her typing would make it—or continue to make it worse?" Dr. S responded in the affirmative.

In the Statement of the Evidence and Discussion of the decision section the hearing officer comments that "[Dr. S] testified that the computer entry activity would not be sufficient to cause her tenosynovitis condition. However, once that condition came into existence her work activities would aggravate that condition." It is apparent from the hearing officer's comment that he based his determination that the claimant's tenosynovitis came into existence before _____, and was aggravated by her work activities on _____, on an assumption that the claimant had an incident that created her tenosynovitis condition prior to _____. The claimant's testimony, the medical evidence, and Dr. S's testimony do not reflect that the claimant had tenosynovitis prior to _____, or that the job duties aggravated a preexisting tenosynovitis condition on _____. In fact the claimant testified that she began having problems with her hands on _____. The claimant never argued at the CCH that her injury was preexisting and was aggravated by her work

duties. The hearing officer noted in his Statement of the Evidence that the "claimant's tenosynovitis came into existence before _____…." There was no evidence in the record that the claimant had tenosynovitis prior to _____, nor was this a theory argued by either party at the CCH. The claimant testified that she began having problems with her hands on _____. Based on the hearing officer's statement of the evidence and findings of fact, it is clear that the hearing officer was not persuaded that the claimant's condition was caused by the work-related duties.

Because the determination of compensable injury is against the great weight and preponderance of the evidence, we reverse and render the decision that the claimant did not sustain a compensable repetitive trauma injury on _____.

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

TREVA DURHAM
1000 HERITAGE CENTER CIRCLE
ROUND ROCK, TEXAS 78664.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Edward Vilano
Appeals Judge