APPEAL NO. 042097
FILED OCTOBER 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A consolidated contested case hearing (CCH) was held on July 20, 2004. In (Docket No. 1), the hearing officer determined that the appellant/cross-respondent's (claimant) compensable injury of (date of injury for Docket No. 1), does not extend to include ulnar nerve neuropathy at the left elbow and that due to her (date of injury for Docket No. 1), compensable injury, the claimant has been unable to obtain and retain employment at wages equivalent to her preinjury wage from January 29, 2003, to April 6, 2004, except for the period from April 5 to April 10, 2003, when she was hospitalized for multiple sclerosis, and at no other time. The claimant appealed, disputing the extent-of-injury determination. The respondent/cross-appellant (carrier) responded, urging affirmance of the disputed determination. The carrier cross-appealed the disability determination in (Docket No. 1) and the claimant responded, urging affirmance. In (Docket No. 2), the hearing officer determined that the claimant's date of injury is (date of injury for Docket No. 2); that the carrier is relieved from liability under Section 409.002, because the claimant failed to timely notify her employer pursuant to Section 409.001; that the claimant did not sustain a compensable repetitive trauma injury on (date of injury for Docket No. 2), or on any other relevant date; and that the claimant has not had disability because of an injury sustained on (date of injury for Docket No. 2), or on any other relevant date. The claimant appealed, disputing the timely notice, date of injury, compensable injury, and disability determinations. The carrier responded, contending that the hearing officer's decision and order should be upheld and that the claimant failed to meet her burden of proof.

DECISION

Affirmed as reformed.

DOCKET NO. 1

It was undisputed that the claimant sustained a compensable injury on (date of injury for Docket No. 1). The claimant had the burden to prove the extent of her (date of injury for Docket No. 1), compensable injury. An extent-of-injury issue is essentially a factual determination for the hearing officer to resolve. There was conflicting evidence regarding this issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the

record reveals that the challenged extent-of-injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb the extent-of-injury determination on appeal.

The claimant had the burden to prove that she had disability as defined by Section 401.011(16). Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain, *supra*; Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. The claimant need not prove that the compensable injury was the sole cause of her disability; only that it was a producing cause. Texas Workers' Compensation Commission Appeal No. 012689, decided December 20, 2001. Nothing in our review of the record indicates that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool, *supra*; Cain, *supra*.

DOCKET NO. 2

The hearing officer did not err in determining that the claimant did not sustain a compensable repetitive trauma injury, and that the date of her alleged injury is (date of injury for Docket No. 2). The claimant had the burden of proof on those issues. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). They presented questions of fact for the hearing officer to resolve. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Pool, *supra*; Cain, *supra*.

The hearing officer determined that the evidence did not establish that the claimant sustained a compensable injury. He simply was not persuaded that the claimant sustained her burden of proving that she injured her right upper extremity as a result of performing repetitive, physically traumatic activities at work. The hearing officer was acting within his province as the fact finder in so finding. Similarly, the hearing officer was free to determine that the date of injury pursuant to Section 408.007, the date the claimant knew or should have known that that her injury may be related to the employment, is (date of injury for Docket No. 2). Nothing in our review of the record demonstrates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse those determinations on appeal. Pool, *supra*; Cain, *supra*.

The hearing officer specifically found in Finding of Fact No. 6 that "[p]ossible causes of [carpal tunnel syndrome (CTS)] other than keyboard use, such as medical factors, weight, and gender, have not been adequately ruled out." By making a finding that potential factors causing CTS have not been adequately ruled out, the hearing officer appears to be requiring the claimant to rule out all other possible causes of CTS to the exclusion of her work activities. However, since the hearing officer found that "[t]he evidence does not show that Claimant's work was demanding enough to cause an injury on the right side or an elbow condition" and there is sufficient evidence to support that finding, no reversible error resulted.

The existence of a compensable injury is a prerequisite to finding disability. Section 401.011(16). Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability because of an injury sustained on (date of injury for Docket No. 2).

In the present case, the issue of timely notice really turns on the issue of the date of the injury. The claimant contends that her date of injury was (alleged date of injury). However, the hearing officer found that the date of the alleged injury was (date of injury for Docket No. 2), a date more than 30 days prior to the date the claimant reported an injury. Having affirmed the hearing officer's date of injury determination, we likewise affirm the hearing officer's determination that the claimant failed to timely report her injury.

The hearing officer found a period of disability due to the claimant's (date of injury for Docket No. 1), compensable injury and that determination has been affirmed. The hearing officer found with regard to Docket No. 2 in Finding of Fact No. 16 and Conclusion of Law No. 9, that the "Claimant has not had disability because of an injury sustained on (date of injury for Docket No. 2), or on any other relevant date." We strike the language "or on any other relevant date" because it could be construed to conflict with the disability finding in Docket No. 1.

We affirm the decision and order of the hearing officer as reformed.

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

CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.

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Margaret L. Turner
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

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Veronica L. Ruberto
Appeals Judge