APPEAL NO. 961008

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 1, 1996. The issues at the CCH were whether the appellant (claimant) sustained an injury in the course and scope of his employment, the date of injury, whether it was timely reported and a claim timely filed. The hearing officer held for the claimant's position in all but the issue of an injury being sustained in the course and scope of employment. The claimant has appealed the adverse ruling on this issue, urging that the hearing officer "abused her discretion in applying the facts of the case to the requirements of the law" and arguing that the decision is against the great weight and preponderance of the evidence. The respondent (carrier) asks that the decision be affirmed, urging that the claimant had not met his burden of proof to establish a compensable injury.

DECISION

Finding error, we reverse and remand.

Unfortunately, this case was not particularly well litigated; however, our concern is with what appears to be a misapplication of law. It is for this reason we reverse and remand the case for further consideration and development of evidence under the provisions of Section 410.203(b)(3). As indicated, the only issue on appeal and only issue affected by this decision is the injury in course and scope question.

The claimant did not offer any exhibits but did testify at the CCH. He stated that he was a machinist for some 27 years with the employer. The job generally entailed repetitive activity working on various machines, pumps, and compressors with tools such as wrenches and hammers. He also checks for emission leaks with a monitor he carries that weighs some five pounds. He stated that he first noticed a problem with numbing in his hands about the time of his physical in 1994 and that he mentioned it to the company nurse, who apparently did not react. He thought it might be age or arthritis and did not relate it to work at the time. The problem persisted and he talked with a couple of other employees who had problems with their hands (but apparently somewhat different symptoms) and two of whom had operations for carpal tunnel syndrome (CTS). The claimant stated that he continued to have problems with his hands aching when he used his hands "alot" whether at home or at work. He stated he is still a machinist, has not missed work but that he had given up golf because of the problems with his hands. On (day before date of injury), while using a hammer at work, the claimant stated he felt a sharp pain from his hand to his elbow, reported the matter and was sent to a doctor and subsequently had an EMG. As a result of the EMG the claimant stated he was first aware he had CTS. The carrier introduced a copy of the EMG results which concluded with the impression of:

> This is an abnormal EMG, demonstrating bilateral median nerve entrapment, neuropathy at the wrist. Electrically, the right was slightly more

> pronounced than the left. In the proper clinical setting, this finding would be compatible with the clinical entity known as "bilateral [CTS], right more pronounced than left, moderate severity of right, asymptomatic and/or mild severity of left." There is no compelling electrodiagnostic evidence at this time to suggest myopathy, peripheral neuropathy, not radiculopathy.

In her Decision and Order, the hearing officer stated that the claimant must not only prove that his alleged repetitive trauma injury "was not only caused by his employment, but was inherent in that employment, or present to an increased degree in that employment, as it compared with employment generally." She goes on, stating that "even though claimant's employment may well have caused or contributed to his [CTS], claimant's [CTS] does not constitute an occupational disease or compensable injury." This indicates to us that the hearing officer may have misapplied the law to the facts of the case.

Initially, we note that we have not held that expert medical evidence "to a reasonable medical probability" is necessarily required to establish causation between CTS and the employment. Texas Workers' Compensation Commission Appeal No. 94815, decided August 4, 1994. *See* Texas Workers' Compensation Commission Appeal No. 931002, decided December 13, 1993. *Compare* Texas Workers' Compensation Commission Appeal No. 951212, decided September 7, 1995. Surely, expert medical evidence as to causation is desirable and helpful in such cases even though it may be in an area of common experience, but it is not mandatory as it may be in other occupational disease settings such as cancer, asthma, pulmonary disease. *See* Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Hernandez v. Texas Employers Insurance Association, 783 S.W.2d 250 (Tex. App.-Corpus Christi 1989, no writ); Texas Workers' Compensation Commission Appeal No. 93668, decided September 14, 1993.

Here, it is apparent that the hearing officer believed that even though the claimant proved that his repetitive trauma injury (CTS) was caused by his employment, he had to further prove that CTS was inherent in the employment or present in an increased degree to establish that he has a compensable injury. This we find to be error. Initially, we note, the definition of occupational disease, which includes repetitive trauma injuries, includes the provision that the term "does not include an ordinary disease of life to which the general public is exposed outside of employment. . . ." As the court stated in Hernandez, *supra*, an opinion on an affliction being an ordinary disease of life is not useful because, "[t]he test of whether a disease is compensable under workers' compensation is if there exists a causal connection, either direct or indirect, between the disease and the employment." Absent a causal link, the disease is not compensable and is an "ordinary disease of life."

In Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston

[14th Dist.] 1985, writ ref'd. n.r.e.), a case involving a repetitive trauma occupational disease, the court stated:

> To recover for an occupational disease of this type, one must not only prove that repetitious physical traumatic activities occurred on the job, but also prove that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally. (*Citing* Home Insurance Co. v. Davis, 642 S.W.2d 268 (Tex. App.-Texarkana 1982, no writ), a case involving a determination of insufficient evidence where the injury claimed was chronic bronchitis).

The court, in reversing a judgment n.o.v., found the record contained some evidence that the claimant "was harmed by repetitive physical traumatic activities on her job and that these activities were a producing cause of her incapacity." We do not read the decision to call for additional elements to be proven, that is, that although there is proof of the causal link between the activities on the job and the injury, further additional or independent proof that the "disease" is inherent or present in an increased degree. If it is proven that a claimant suffered bodily harm or injury from physically traumatic activities on the job and the job-related activities are a producing cause of the claimant's harm or injury, there is no further requirement that additional elements be proven. Just as the establishment of the necessary causal link avoids the necessity of an ordinary disease of life determination in Hernandez, *supra*, it is not required that it be proven the disease is inherent in or present in a greater degree when the evidence sufficiently proves that repetitive traumatic activities occurred on the job and there is a causal link between the activities and the harm or injury. Appeal 93668, *supra*. *See generally* Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 1994.

As the court stated in Davis, *supra*, its decision was a narrow ruling and each claim for an occupational disease must be judged on a case-by-case basis. We have previously held, for example, that ordinary walking or standing is not enough to constitute repetitive trauma or an occupational disease. *See* Texas Workers' Compensation Commission Appeal No. 931067, decided December 31, 1993; Texas Workers' Compensation Commission Appeal No. 93420, decided July 16, 1993. However, CTS had not been deemed, *per se*, to be an ordinary disease and there are legions of cases where CTS is held to be a compensable injury. *See, e.g.*, Texas Workers' Compensation Commission Appeal No. 952212, decided February 8, 1996; Texas Workers' Compensation Commission Appeal No. 951917, decided December 28, 1995; Texas Workers' Compensation Commission Appeal No. 951666, decided November 20, 1995; Texas Workers' Compensation Commission Appeal No. 950411, decided May 2, 1995; Texas Workers' Compensation Commission Appeal No. 94815, decided August 4, 1994.

Our decision here is predicated on the likely application of an incorrect legal

standard. We recognize that the hearing officer, as the fact finder (Sections 410.165(a) and 410.168(a)), is in the better position to assess the evidence in a case. Only where we conclude there is no evidence or insufficient evidence do we disturb a finding. And, we recognize that in this case there was some evidence that other, non work-related activity may be of significance. That is a matter for the fact finder. However, if, as is suggested by the hearing officer's comments, the determination that a compensable injury has not been established even though the evidence established physically traumatic activity at work and that "claimant's employment as a machinist may well have caused or contributed to his [CTS]" (the necessary causal link), and that it must be further proven, for a compensable injury, that the activity is inherent in or present in a greater degree, we hold that to be error. Accordingly, we remand for further consideration and development of evidence not inconsistent with this opinion. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's division of hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge