APPEAL NO. 980628

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 February 24, 1998. He (hearing officer) determined that the respondent (claimant) sustained a compensable repetitive trauma injury on _____; that she timely reported the injury to her employer; and that she had disability from July 21, 1997, through the date of the hearing. The appellant (self-insured) appeals these determinations, contending that they are against the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked in the linen department of a hospital. She described a typical workday as beginning at 6:45 a.m. She folded sheets, blankets and pillowcases until 7:30 a.m. and then stacked the items on a cart for placement on shelves in operating rooms. According to the claimant, the cart held from 90 to 120 items and she went through this process of loading and delivery four or five times a day. She further testified that on _____, she felt pain in her neck and into her shoulders and arms. The pain became so severe, she said, that she could not sleep that night. She went to work the next day and said she told Ms. J that she was hurting from lifting sheets. The claimant identified Ms. J as the substitute supervisor when Ms. G was not present, which she said, was the situation on April 17, 1997, when she talked to Ms. J.

The claimant first sought medical care at an emergency room, and she was diagnosed with a possible fatty tissue tumor on the left shoulder where she had swelling. She was then referred to Dr. S, who made further referrals to Dr. B and to Dr. M. The lipoma was considered not significant and she was eventually diagnosed with left-sided neck and shoulder strain.

Ms. P, the benefits coordinator for the employer, testified that Ms. G was a "lead linen aide" and her duties involved scheduling and organizing the tasks to be performed, but was not, in her opinion, a supervisor. She also said that Ms. J "could not be" a supervisor. According to Ms. P, she had no knowledge that the claimant was asserting a work-related injury until she was called in September 1997 by the adjuster.

In a transcribed telephone conversation, Ms. J is reported as stating that the claimant made general complaints over time that her arm was bothering her, but never related it to her employment and never complained about neck or back problems. Ms. J is also quoted as saying that the claimant "said that the linen had caused it. But there was never a certain day that an injury occurred or that I saw an injury occur." Ms. G is reported

in a transcribed telephone conversation as being asked: "Okay and you do supervisor [sic] over her?" and answering "[y]es, ma'am." She was also asked whether Ms. J is "ever a supervisory [sic] when there is no one else there?" and answering "[s]he's in charge when I'm not here." Ms. G is also reported as saying the claimant never complained to her about her neck hurting.

The self-insured appeals the finding that the claimant sustained a compensable repetitive trauma injury on _____, but gives no reason for this part of its appeal. We thus construe it as an appeal on the basis of the sufficiency of the evidence. Whether the claimant sustained a compensable injury as claimed is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Having reviewed the record, we conclude that the testimony of the claimant and the medical opinions in evidence deemed credible by the hearing officer were sufficient to support this determination. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Whether and, if so, when the claimant gave notice of her injury was also a question of fact for the hearing officer. He obviously found the claimant credible in her assertion that she reported her injury and the circumstances of the injury to Ms. J the next day. The thrust of the self-insured's appeal of the determination of timely notice is its contention that Ms. J "was not someone in a supervisory capacity . . . ." Section 409.001 requires that a claimant give notice of an injury to the employer or to "an employee of the employer who holds a supervisory or management position." Section 409.001(b)(2). Whether Ms. J held a supervisory or management position on _____, was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950282, decided April 10, 1995. A claimant's belief that the person to whom notice is given is a supervisor or manager does not establish this status. Texas Workers' Compensation Commission Appeal No. 950430, decided May 4, 1995. In Texas Workers' Compensation Commission Appeal No. 961551, decided September 19,1996, a case which addressed the question of whether a "service writer" was a supervisor for purposes of receiving notice of an injury, we discussed the concept of supervisor or manager and the notion of whether a "lead" person could be a supervisor. There we reiterated that the right to hire and fire did not necessarily control the issue. In the case now before us, Ms. P did not consider either Ms. G or Ms. J to be supervisors (or presumably managers), even though she referred to Ms. G as a "lead" linen person and conceded that Ms. G, and Ms. J in Ms. G's absence, scheduled the work for the claimant. This was not unlike the "service writer" in Appeal No. 961551. Ms. G and Ms. J, according to their statements, considered themselves supervisors to the extent that they apparently assigned work tasks. We consider the evidence sufficient to support the determination of the hearing officer that Ms. J was the claimant's supervisor and that the claimant timely reported her claimed injury to Ms. J on April 17, 1997.

Finally, the self-insured appeals the finding of disability, arguing that the claimant was placed in a light-duty status by Dr. S and that "the evidence is overwhelming" that the

self-insured offered the claimant a light-duty position. Dr. S testified by telephone that he believed the claimant could work a light-duty sedentary position with the key restrictions being that she avoid repetitive activities with her hands and not lift over five pounds. The claimant did not work after July 20, 1997, except for part of the day on September 22, 1997. Ms. P testified that she found the claimant a light-duty job in the accounting department. The duties included essentially opening the mail, distributing it, answering the telephone and doing other light office-type work. Ms. P said she sent a copy of this job description (not in evidence) to Dr. S who said he believed the claimant could perform these duties. Dr. S confirmed this in his telephone testimony. The claimant worked approximately two and one-half hours in this position on September 22, 1997, and had to stop, she said, because of the pain. The claimant also testified that in November 1997 Dr. S completely excused her from work, a belief not reflected in Dr. S's testimony.

Because no written offer of light duty was in evidence, much of the CCH was devoted to proving the existence of the offer and its terms. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.5 (Rule 129.5). It is clear, however, that an offer was made by virtue of the undisputed fact that the claimant reported for work on September 22, 1997, and attempted to perform the "light" duties assigned her. Ultimately, the issue thus became not whether light duty was offered, but whether it was "bona fide" in the sense that the light duty offered was within her restrictions. The claimant testified that it was not. The employer and Dr. S believed it was. The hearing officer found the claimant's testimony on this point persuasive and credible and concluded that the employer did not make a bona fide offer of light duty. It has been noted that disability can be proved by the testimony of a claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. We likewise believe that the claimant's testimony can establish whether an offer of light duty is bona fide in the sense that it meets her physical restrictions even though there is medical evidence to the contrary. *See* Texas Workers' Compensation Commission Appeal No. 962100, decided December 4, 1996. Thus, we conclude that the evidence in this case was sufficient to support the disability determination.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Christopher L. Rhodes
Appeals Judge