APPEAL NO. 992946

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On November 2, 1999, a contested case hearing was held. With regard to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable (right shoulder) injury in the form of an occupational disease on _____ (all dates are 1999 unless otherwise stated) and that claimant had disability from July 2nd through September 20th.

Appellant (carrier) appeals, contending that claimant's shoulder strain was not unique to his employment; that claimant had failed to prove a causal link between his job and his injury; and that claimant's injury was a specific injury rather than an occupational disease. Carrier also contends that expert medical evidence is required because of the radiological finding of degenerative hypertrophy and the medical records do not establish an occupational disease injury. Carrier contends that without a compensable injury, there can be no disability. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The file does not contain a response from claimant.

DECISION

Affirmed.

Claimant was employed as a "flower processor" for a floral company (employer). Claimant testified regarding his duties, which included cutting and arranging flowers, lifting, pushing, pulling boxes and lifting five-gallon buckets half full of water containing cut flowers. Claimant testified that at about 2:00 p.m. on _____, as he was pushing and pulling "a cutter," his right (dominant) arm and shoulder began to get sore. Claimant said that he thought his arm and shoulder were just sore from working and he continued his shift. The following morning, _____, claimant said, his shoulder was "fine," but as he continued working, "it got sorer and sorer." Claimant finished his work and then went to the hospital.

A hospital emergency room (ER) record dated _____ noted a complaint of right "shoulder & arm pain for 3 weeks," and "denies injury," diagnosed a right shoulder strain and prescribed ibuprofen. Claimant said the doctor told him to take off work two or three days. Claimant said that he told his employer about the injury (reporting is not an issue) and was sent to (M clinic). A handwritten M clinic report dated July 6th diagnoses "[a]cute right shoulder strain - ? impingement." Claimant was released to light duty with limitation of no use or minimal use of the right arm. Claimant was prescribed physical therapy. Claimant said that the employer had no light duty and that he was unable to work elsewhere. Other reports, dated July 8th, 10th (which also noted "no light duty available") 13th, 15th, 17th, 23rd, and 26th contain essentially the same information. The July 26th report released claimant to regular duty.

Claimant then began treating with Dr. L at the (K clinic) who, in a report dated July 26th, diagnosed right shoulder strain and took claimant off work altogether. The history

was "repeatedly lifting 5 gallon buckets of water." A consultant's report dated July 28th had an impression of "[d]egenerative hypertrophy of the AC joint." Subsequent off-work slips kept claimant off work. A right shoulder MRI performed on August 17th was normal. In a report dated September 1st, claimant was returned "to work without restrictions effective 9/20/99." Claimant returned to work but testified that he was unable to meet the processing requirements and was subsequently discharged on October 12th. In closing argument, claimant represented that he was claiming disability from July 20th through September 20th, which is what the hearing officer found.

Carrier, in its appeal, points to inconsistencies and contradictions in claimant's testimony; the relatively short time claimant had been working for the employer (a little over a month); that shoulder strains are not "unique to flower processors"; and that claimant's injury, if any, was the result of a specific injury which occurred about 2:00 p.m. on _____, and, therefore, was not an occupational disease. Carrier also contends that this is the type of case that "requires expert testimony to establish a causal link between the employment and the injuries," and the medical records did not contain such a connection.

We may agree that the evidence is in conflict and claimant's testimony would support a specific incident on _____, while the ER record of pain for three or four weeks would support a repetitive trauma injury with a date of injury on _____, the date claimant knew or should have known that the disease (injury) may be related to the employment. Section 408.007. In any event, these points were made to the hearing officer, and Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. 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 regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

An occupational disease is "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. . . . The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). A repetitive trauma injury is "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." Section 401.011(36). An employee must prove, by a preponderance of the evidence, the compensability of an occupational disease. Texas Workers' Compensation Commission Appeal No. 960582, decided May 2, 1996, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). "[O]ne must not only prove that recurring, physically traumatic activities occurred on the job, but must also prove that a causal link exists between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared to

employment generally." Texas Workers' Compensation Commission Appeal No. 950868, decided July 13, 1995, citing Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). The hearing officer found that claimant "was repeatedly lifting 5 gallon buckets of water (half-full)" when he had his onset of right shoulder pain. That finding is supported by the evidence and we reject carrier's contention that this type of shoulder strain requires expert medical evidence, although there is such evidence in the record. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

Carrier's appeal of the disability issue is premised on no compensable injury. Having affirmed the compensable injury, we also affirm the hearing officer's finding of disability.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge