IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-60091

SANDRA R. HALL,

Plaintiff-Appellee,

versus

SAVINGS OF AMERICA,

Defendant-Appellant.

Appeal from United States District Court
for the Southern District of Texas

September 14, 1995

Before HIGGINBOTHAM, SMITH and STEWART, Circuit Judges.

CARL E. STEWART, Circuit Judge:[*]

This is a wrongful termination case in which the jury awarded plaintiff Sandra Hall $2.3 million in compensatory and punitive damages based on her claims of retaliatory discharge under the Texas Workers' Compensation Act[1] (TWCA) and disability discrimination under the former Texas Commission on Human Rights Act[2] (TCHRA). On appeal, Savings of America challenges the

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

[1]TEX. REV. CIV. STAT. ANN. article 8307c

[2]TEX. REV. CIV. STAT. ANN. article 5221k, now found at Chapter 21 of the Texas Labor Code. *See* TEX. LAB. CODE ANN. § 21.001-.262.

sufficiency of the evidence as to both the TWCA and the TCHRA claims, attacks the damages awards on several bases, and maintains that the district court instructed the jury erroneously and submitted an incorrect interrogatory on the verdict form. Because we are convinced that no reasonable jury could have concluded that a violation of the TWCA or TCHRA had occurred, we REVERSE and render judgment in favor of the defendant Savings of America.

Background Facts

Hall was a long-term employee of Savings of America, working in Houston, Texas, as a senior coordinator of a Career Awareness Program (CAP) run by Savings to teach employment and job hunting skills as well as provide scholarships to "at-risk" inner city teenagers. Students finishing in the top ten per cent of the CAP program were given summer jobs at Savings. Hall's job was roughly analogous to a teaching position. Hall conducted after-school classes at area high schools, administered exams, graded papers, and took students on field trips geared toward educating them on opportunities in the banking industry. The position allowed for a great deal of autonomy and independent work; Hall's immediate supervisor, Judy Morgan-Phillips, was located in Irwindale, California, at Savings' home office. Hall had a good work history with Savings. Morgan-Phillips had rated Hall "outstanding" in the company's annual job performance appraisals for several years immediately prior to her termination.

Beginning in 1985, while pregnant with her first child, Hall began to experience pain and tingling in her hands. When the pain

did not subside after her child was born, Hall began seeing a doctor for the problem. She was diagnosed with carpal tunnel syndrome[3] in both hands. In June 1990, Hall underwent surgery on her right hand. While off from work recovering from the surgery, Hall continued to be paid 100% of her salary through Savings' extended paid absence program (EPA). On August 15, 1990, Hall was told by her doctor that her carpal tunnel syndrome was possibly work related.[4] On August 28, 1990, Hall returned to work after the surgery. On September 18, 1990, Hall reported to Savings that her carpal tunnel was possibly a work related injury.

The record contains somewhat conflicting testimony as to whether Hall wanted to file a worker's compensation claim at that time. Hall contends that she wanted to file a claim but was told that she would have to refund the money paid to her during her EPA before she could file a claim.[5] The documentary evidence supports Hall's assertion that she was in fact told that she would have to refund any EPA money she received before filing a worker's compensation claim. However, it also indicates that Hall

[3]Carpal tunnel syndrome is a condition in which a person experiences tingling, "pins and needles", burning, numbness, and pain in the fingertips or hand because a major nerve located in the wrist has become compressed by bones or ligaments.

[4]In addition to teaching, Hall's job duties included typing on a computer and handling student files. Repetitive manual tasks such as these are often linked to the cause of carpal tunnel syndrome.

[5]The information given to Hall was erroneous. The law does not require that a claimant refund such money prior to filing a claim. *See* TEX. REV. CIV. STAT. ANN. article 8308-4.06(f) [recodified at TEX. LAB. CODE ANN. § 408.003(d)(2)].

affirmatively decided that she would not pursue worker's compensation at that point. It is unclear whether Hall's decision was driven primarily because of the erroneous information given her by Morgan-Phillips regarding the need to refund EPA money. In any event, Hall did not further pursue a worker's compensation claim at that point.

Hall contends that Morgan-Phillips' attitude toward her changed drastically from the moment she reported that her carpal tunnel syndrome was possibly work related. Although the two had enjoyed a friendly relationship in the past, Hall testified that, beginning in September 1990, Morgan-Phillips began to be very "cool" and "professional" when dealing with her. Morgan-Phillips testified that Hall was the one who "changed" around that time. Hall had gotten married during the summer of 1990 and had acquired five new stepchildren in addition to her own two children. Morgan-Phillips testified that Hall had experienced some family problems around that time, and that she had suggested that Hall take advantage of counseling available through a program at Savings, but that Hall had refused.

In any event, the record is clear that the relationship between the two began to deteriorate in the fall of 1990. The problems never did improve but instead grew steadily worse. In January, 1991, Hall took another leave of absence for a second carpal tunnel surgery, this time on her left hand. She was off work from January 16, 1991 until April 1, 1991. As with the first surgery, Hall was paid 100% of her salary while off work through

the company's EPA program. The testimony at trial indicates that the real unraveling between Hall and Morgan-Phillips may have occurred while Hall was out on leave during her second surgery. While Hall was recovering, Savings sent a program coordinator from Irwindale to teach the CAP classes in her absence. Although Hall was on leave, she would come into the office after hours and on weekends to check her mail and leave messages for the substitute coordinator, Alice Young. When Morgan-Phillips learned of this, she asked that Hall not enter the premises while out on EPA, apparently because of a liability concern. Hall did not take this mandate well. She began to have problems not only with Morgan-Phillips but with Young, communicating with her by telephone from home. Once Hall returned to work on April 1, 1991, Morgan-Phillips had Young remain in Houston for a while to help Hall make the transition back. Young later returned a second time to provide further assistance in lightening Hall's workload by wrapping up classes for the semester. The record is clear that the friction between Hall and Young quickly escalated to the point that they could not work together at all.

Young and Morgan-Phillips were not the only ones with whom Hall had problems: she also had problems with the program coordinator in Dallas, who at that time reported to Hall. In response to the Dallas coordinator's complaints, Morgan-Phillips modified the chain of command, instructing the Dallas office to report directly to Irwindale. Hall apparently viewed this as a demotion and became even more unhappy. The record also reflects

that other of Hall's coworkers began to complain about her, and that eventually even some of the school principals and counselors at the high schools voiced complaints. Morgan-Phillips clearly blamed Hall for the problems she was having in getting along with others. She formally counseled[6] Hall about the situation by telephone on April 24, 1991.

On May 2, 1991, another incident occurred. Hall visited a neurologist, who put her on immediate medical leave for work-related stress. Rather than telephoning Irwindale and informing Morgan-Phillips that she would be off work, Hall sent written notice of her leave status to Morgan-Phillips via express mail; however, the correspondence was misplaced and Morgan-Phillips never saw it. Apparently Morgan-Phillips was not aware that Hall was out of the office until May 10, 1991. She called Hall at home and formally counseled her for not informing her by telephone about her leave status. Morgan-Phillips also counseled Hall about unilaterally canceling, without authority, Savings' participation in an awards ceremony at one of the high schools in the CAP program. She told Hall that any further occurrences of a similar nature would subject her to immediate termination.

On May 13, 1991, Hall returned to work. At some point during

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[6]"Counseling" is a term-of-art, which refers to the second level of Savings' progressive disciplinary process used to address an employee's deficiencies. Savings first employs a "record of discussion" (an informal discussion between supervisor and employee), then it uses "counseling" (formal communications identifying the area in which the employee needed improvement and notifying the employee that failure to improve could result in further reprimand or termination).

May or June 1991, Jay Josephson, Savings' human resource manager, filed a worker's compensation claim on behalf of Hall for job related stress. He noted on the claim form that Hall had not reported it as a work related injury. Hall apparently did not pursue the claim. The record contains scant evidence of any worker's compensation activity.

On June 19, 1991, Morgan-Phillips put Hall on medical leave pending a letter from her doctor regarding her condition.[7] It took the doctor almost a month to respond. The doctor's letter indicated that Hall was free to return to work but noted that Hall had reported pain, primarily in her right hand, which she attributed to "too many work-related activities." The letter suggested "it may be beneficial if [Hall's] workload can be legitimately reduced for a 6-12 month period to determine if her discomfort may be alleviated."

Upon receipt of the letter, Josephson contacted Hall's doctor to clarify her medical restrictions. The doctor articulated that Hall should not engage in any repetitive heavy lifting, such as lifting stacks of books. The doctor was of the opinion that Hall could perform her job duties, including typing and keyboard use, so long as this use was intermittent and not her only activity for an eight hour day.

Based on this information, Morgan-Phillips sent a memo to Hall stating that although Savings would accommodate the restrictions

[7]This "involuntary" medical leave apparently was prompted by a memorandum Hall had sent to Morgan-Phillips complaining about pain in her arm.

articulated by Hall's doctor, she expected Hall to do her job. Part of Hall's job was to submit monthly reports and time management logs to Morgan-Phillips. These documents had to be prepared on the computer.[8] Our review of the time management logs reveals that they would require a fair amount of typing, with numerous entries recording Hall's activities throughout the day, including phone calls, appointments, etc. On July 26, 1991, Hall left for her vacation at one of the company's condominiums without first submitting her monthly report, which was due, although she did turn in her time management log. When Hall returned from vacation, Morgan-Phillips terminated her. Morgan-Phillips contends that she had previously told Hall she would consider her vacation request after receiving the monthly report and time management log, but that Hall had taken the vacation without Morgan-Phillips' authorization and knowledge. Thus, Savings contends that Hall was fired for insubordination. Hall maintains that the monthly report and time management log were not a stipulated pre-condition for her vacation, and that Savings' claim of insubordination was pretextual.

Analysis

As noted above, dual theories of liability based upon worker's compensation claim retaliation and upon disability discrimination were alleged in this case. Hall contends that Savings fired her,

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[8]Although Morgan-Phillips had told Hall she could handwrite the time management logs, Hall testified at trial that, because she had to wear braces on both hands following her surgery, her handwriting was so poor even she could barely read it.

not for insubordination, but because she had made a worker's compensation claim and because she was disabled. The jury found that Savings violated both the TWCA and TCHRA. In this opinion, we deal with each of the plaintiff's claims in turn.

Savings contends that Hall had "maxed out" at her pay scale and became frustrated in her job, gradually degenerating into open warfare with her colleagues, school officials, and her supervisor. Savings claims that the denouement occurred when Hall took what it claims was an unauthorized vacation after refusing to complete a mandatory assignment that it contends was a pre-condition for consideration of her vacation request. Savings claims this final act of insubordination capped off the worsening pattern of fractious and insubordinate behavior which had begun to preoccupy the entire CAP department in both Houston and Irwindale.

Hall claims that the insubordination claim was pretextual, and that she was really fired because she had carpal tunnel syndrome and reported it as work-related.

Worker's Compensation Claim

The jury found that Savings fired Hall at least in part in retaliation for filing a worker's compensation claim. On appeal, Savings argues that the evidence does not support such a conclusion. Thus, Savings contends that the district court erred in not granting its judgment as a matter of law.

Standard of Review

The parties are in dispute over the applicable standard of review on appeal. Hall argues that because counsel for Savings did

not renew his motion for judgment as a matter of law as to the worker's compensation retaliation claim at the close of all the evidence as required by Fed. R. Civ. P. 50(b), then we should review the jury verdict under the "any evidence" standard.

Sufficiency of the evidence is not reviewable on appeal unless a motion for judgment as a matter of law is made at the conclusion of all the evidence. McCann v. Texas City Refining, Inc., 984 F.2d 667, 671 (5th Cir. 1993). Absent such a motion, the appellate court reviews the evidence only to ascertain whether there was any evidence to support the jury's verdict, irrespective of its sufficiency or whether plain error was committed which, if not noticed, would result in a manifest miscarriage of justice. Wells v. State Farm Fire and Cas. Co., 993 F.2d 510, 512 (5th Cir. 1993).

Savings admits that it did not move for judgment as a matter of law as to the worker's compensation claim at the close of all the evidence, but points out that, at the close of Hall's case-in-chief, Savings had moved for directed verdict as to Hall's claims under both TCHRA and the TWCA. The motion was denied. After the close of Savings' case-in-chief[9] and closing arguments, Hall moved for judgment as a matter of law, which was denied. Savings then renewed its motion for judgment as a matter of law, but this second time Savings' counsel referred only to the claim under TCHRA, not the TWCA claim. Savings' renewed motion was denied.

Savings points out that although counsel did not mention the

[9]Savings' case-in-chief was comprised of the testimony of just one witness.

TWCA claim when it renewed its previous motion at the close of all the evidence, we should nonetheless excuse its technical noncompliance with Fed. R. Civ. P. 50(b). We agree.

This Court has emphasized that the application of Rule 50(b) "should be examined in the light of the accomplishment of [its] particular purpose[s] as well as in the general context of securing a fair trial for all concerned in the quest for truth." Merwine v. Board of Trustees, 754 F.2d 631, 634 (5th Cir.), cert. denied, 474 U.S. 823, 106 S. Ct. 76, 88 L. Ed. 2d 62 (1985); Bohrer v. Hanes Corp., 715 F.2d 213, 217 (5th Cir. 1983), cert. denied, 465 U.S. 1026, 104 S. Ct. 1284, 79 L. Ed. 2d 687 (1984).

Savings argues that the facts in this case are similar to those in Bohrer. In Bohrer, defendants moved for directed verdict at the close of plaintiff's case. A ruling was reserved. Defendants then introduced evidence adverse to plaintiff. Plaintiff offered no rebuttal evidence. Defendants did not renew their motion at the close of all evidence. The Bohrer court held that the defendants' technical non-compliance with Rule 50(b) was excused because the purposes of Rule 50(b) had been served. The purpose of the rule is to enable the court to re-examine the question of evidentiary insufficiency as a matter of law if the jury returns a verdict contrary to the movant, and to alert the opposing party to the insufficiency before the case is submitted to the jury, thereby affording it an opportunity to cure any defects in proof. Merwine, 754 F.2d at 634.

While it is certainly the better and safer practice to fully

renew a judgment as a matter of law at the close of all the evidence, we excuse Savings' technical noncompliance with 50(b) under the circumstances extant in this case because we are convinced that the purposes of the rule have been served. Moreover, the trial transcript reveals that the district judge was in large part responsible for Savings' counsel's noncompliance. When counsel for Savings moved for instructed directed verdict at the close of the plaintiff's case-in-chief, the district court cut counsel short and said he would allow the motion to be supplemented at the close of all the evidence.

The Court then told counsel that Savings' motion was acknowledged "on a timely basis for all purposes," and that "it constitutes the record for appellate scrutiny." Savings then presented its case, one witness comprising five pages in the record. Hall offered no rebuttal. Savings argues that it relied on the Court's advice that the motion would remain open until the end of the case. By using the word "supplement" the Court directed Savings to add anything he might have "missed" at the close of Hall's case. The Court emphasized there was no need to renew motions already urged, only a need to supplement. Thus, at the end of the case, counsel for Savings supplemented the motion, adding the specific reference to plaintiff's TCHRA claim to its motion for judgment as a matter of law.[10]

Because we excuse Savings' technical noncompliance with Rule

[10]Actually, counsel for Savings had already referred to the TCHRA claim when moving for judgment as a matter of law at the end of the plaintiff's case-in-chief.

50(b), we reject Hall's argument that the "any evidence" standard should be employed. Instead, we employ on appeal the same standard the district court used in ruling on the defendant's motions:

> [T]he Court should consider all of the evidence--not just the evidence which supports the non-mover's case--but in the light and with all reasonable inferences most favorable to the party opposed to the motion. If the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that reasonable men could not arrive at a contrary verdict, granting of the motions is proper.

Parham v. Carrier Corp., 9 F.3d 383, 386 (5th Cir. 1993), citing Boeing Co. v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969)(en banc).

Was the evidence sufficient to support the TWCA verdict?

Savings contends that Hall has not presented sufficient evidence to establish the causal connection between her worker's compensation claim and her termination. Savings also points out that its own human resources manager filed the worker's compensation claim for Hall. Thus, it was encouraging, rather than discouraging, Hall's worker's compensation activity. Additionally, Savings contends that the overwhelming evidence showed that Hall's repeated misconduct caused her termination to such a degree that, viewing all of the evidence, a reasonable jury could not have awarded recovery to Hall.

Hall's retaliatory discharge claim was based on article 8307c of the Texas Workers' Compensation Act, which reads in pertinent part:

> No person may discharge or in any other manner discriminate against any employee because the employee has in good faith filed a claim, hired a lawyer to

> represent him in a claim, instituted, or caused to be instituted, in good faith, any proceeding under the Texas Workmen's Compensation Act or has testified or is about to testify in such proceeding.

TEX. REV. CIV. STAT. ANN. art. 8307c, § 1.

To recover for retaliatory discharge, an employee bringing suit under the TWCA must show that: (1) the employer discharged the employee (2) because he or she in good faith filed a worker’s compensation claim, and (3) the employer's conduct resulted in damages to the employee. Azar Nut Co. v. Caille, 720 S.W.2d 685 (Tex. App. -- El Paso 1986), aff'd, 734 S.W.2d 667 (Tex. 1987).

Thus, in order to recover under the TWCA, the plaintiff bears the burden of establishing a causal nexus between his worker’s compensation activity and his discharge. The plaintiff need not prove that his quest for worker’s compensation was the sole reason for his discharge, but he must establish that it was a determining factor. Parham v. Carrier Corp., *supra*, 9 F.3d at 386.

If the plaintiff establishes the causal link, the employer may rebut the alleged discrimination by showing a legitimate reason for the discharge. Swearingen, 968 F.2d at 562. If the employer furnishes a legitimate reason, the employee must show that this reason is but a pretext and that the worker’s compensation claim was, in fact, a determining factor. The Texas Supreme Court recently reaffirmed the principle, generally applicable in employment discrimination cases, that in cases of alleged discrimination under the worker’s compensation statute, where an employer articulates a "legitimate, non-discriminatory reason for the discharge," the employee must "produce evidence of retaliatory

motive." Texas Division-Tranter, Inc. v. Carrozza, 876 S.W.2d 312 (Tex. 1994) (per curiam).

We have carefully reviewed the record to determine whether a reasonable jury could have concluded that Savings' claim of insubordination was pretextual, and that Hall was actually fired in retaliation for her claim of work-related injury. We have determined that the evidence was not sufficient, when viewed in a light more favorable to affirming the jury verdict, for a reasonable jury to so conclude.

At trial, Hall attempted to use statistical evidence to prove that Savings has a history of terminating employees who make worker's compensation claims. In Parham, *supra*, 9 F.3d at 388, we noted that a pattern of firing employees who have filed compensation claims could be probative of retaliatory discharge. However, we have carefully reviewed the statistical information in the record regarding the number of employees who filed worker's compensation claims and who were subsequently involuntarily terminated, and we find no such pattern. We find the number of involuntary terminations following worker's compensation activity to be very small at Savings. One of the terminated employees, a bank teller, was fired two years after filing a claim. She apparently had failed to follow company procedures with regard to a transaction, and her error cost the company several thousand dollars. Her termination is not probative of a pattern of retaliation.

However, Hall presented other evidence to establish

retaliatory motive. Hall attempted to paint a picture of Savings' hostility toward worker's compensation claimants through the use of a 1984 memorandum from its then-President, Mario Antoci. The Antoci memo was directed to the subject of industrial accidents and expressed a concern about the cost of worker's compensation insurance to the company. In it Antoci requested that Savings managers, loan officers, and department heads hold regular safety meetings with staff members. He states that "[i]t is imperative that the employees are made aware of the effect carelessness has on our 'bottom line.' Please stress that expenses caused by negligence will not reflect well on the employee nor on the department manager where the employee works, where a pattern of carelessness seems apparent."

Hall points to the Antoci memo as evidence of a corporate policy of hostility toward claimants. Hall's position is that the memo contains a direct threat of retaliation against those who file claims for job related injuries. Thus, Hall submits that it establishes a causal nexus between her worker's compensation activity and her termination.

We have carefully reviewed the Antoci memo. We are not persuaded that it provides more than a scintilla of evidence of corporate hostility toward worker's compensation claimants at Savings. Moreover, we note that although the tenor of the memo could arguably be construed as somewhat stern, it is geared toward avoiding unnecessary workplace <u>accidents</u> which occur because of carelessness, rather than the type of malady with which Hall was

afflicted. As Parham, *supra*, 9 F.3d at 387, makes clear, improved safety is a legitimate corporate goal. Moreover, the lack of temporal proximity between the 1984 memo and Hall's termination in 1991, some seven years later, disqualifies the memo as the sort of evidence which is sufficient to establish causation.

In addition to Hall's testimony that Morgan-Phillips' attitude toward her changed drastically the moment she report her work-related injury, Hall offers other circumstantial evidence as proof that there was a causal connection between worker's compensation activity and her termination. For example, she was denied summer help for the first time in eleven years. Hall submits that this sort of circumstantial evidence establishes the causal connection between the filing of her claim and her termination.

We have carefully reviewed the entire record in the light most favorable to Hall. However, we simply cannot find sufficient evidence of a causal connection between the filing of the worker's compensation claim and Hall's termination. We are persuaded that no reasonable jury, looking at all the evidence, could conclude that Hall was fired for any reason other than her insubordination and misconduct. Although there may have been a misunderstanding as to whether or not the vacation request was conditioned upon turning in the requisite report and log, it is clear that the relationship between Morgan-Phillips and Hall had deteriorated to the point that a working relationship had become impossible and that the reason for the termination was not pretextual. Hall admitted that she was the problem at that time. She also admitted to making several

comments which are clearly insubordinate, such as telling Morgan-Phillips she was out of line and saying she did not want to hear anything more from her. She also admitted that she told Morgan-Phillips she was writing down everything she said. We are therefore faced with an abundance of evidence to support the reasons forwarded by Morgan-Phillips as prompting the termination, while there is an utter dearth of evidence indicating that Hall's claims of worker's compensation retaliation have any merit. Thus, we find that the evidence does not support the jury verdict as to the TWCA claim, and accordingly, we reverse the verdict.

Was the evidence sufficient to support the TCHRA verdict?

We note at the outset that, just as Hall presented dual theories of liability under both the TWCA and TCHRA, she in turn presented the handicap discrimination aspect of her case under a "dual theory." Hall claimed that she was disabled not only by carpal tunnel syndrome but also by emotional problems, which she argued were caused by the pain and stress she experienced concomitant to the carpal tunnel syndrome.

Mental Disability?

At trial, although dual theories of disability were forwarded, Hall's counsel presented this case primarily as one in which Hall's stress was highlighted more than the carpal tunnel syndrome. For example, counsel argued that Savings should have forced Hall into psychiatric/psychological counseling under threat of termination prior to actually firing her. Thus, Hall argued that Savings did not reasonably accommodate Hall's mental "disability."

We have carefully reviewed the record to determine whether a reasonable jury could have concluded that Hall was mentally disabled at the time she was terminated. Although it is clear that this was a difficult period in Hall's life, we are not persuaded that Hall's problem and stress rose to the level of a disability within the meaning of TCHRA. Although Hall testified at trial about how much stress she was under and that she definitely had a "problem" at that time in her life, the evidence adduced is insufficient to establish that Hall was mentally handicapped or, for that matter, that Savings had notice of any real emotional or mental problem. In fact, the only reference in the record to any real mental or emotional problems, other than Hall's own testimony, is the reference to the medical leave taken by Hall in May 1991 for work-related stress and the worker's compensation claim Josephson filed for her shortly after. Even Hall's own doctor did not refer to any mental or emotional disorder in her "work limitations" letter to Savings in July 1991. Moreover, although Hall's testimony was poignant and candid in that she admitted that she knew she had a problem at that time and that she was the cause of a lot of the problems she experienced, it is merely lay evidence and is limited to Hall's hindsight perspective. Except for the scant evidence of this single episode of work-related stress, Hall adduced no compelling evidence to support a finding of mental disability or handicap. There is no indication that Hall suffered from any type of true emotional or mental disorder.

In Daley v. Koch, 892 F.2d 212 (2d Cir. 1989), a police

officer candidate who was rejected because a psychologist found that he had shown poor judgment, irresponsible behavior, and poor impulse control was not an individual with handicaps under the federal Rehabilitation Act, because he was not diagnosed with any particular psychological disease or disorder, nor was there evidence that the employer had perceived him to be suffering from such a disorder.

Savings submits that Hall's problems were similar to those of the officer candidate in Daley. Thus, although Hall had personality problems and was under stress, she was not "disabled" under TCHRA. We agree.

Disabled by Carpal Tunnel?

Turning now to the question of whether Hall was handicapped by carpal tunnel syndrome, we note that there are no reported Texas cases in which carpal tunnel syndrome had been recognized as a disability or handicap under TCHRA. However, our review of cases under the Americans with Disability Act and cases under other states' disability discrimination statutes reveal that in some cases, carpal tunnel syndrome may rise to the level of a disability, depending on the severity of the case.

To sustain an action under TCHRA, a plaintiff claiming handicap discrimination must establish three elements: (1) that he is a handicapped person as defined in the Act; (2) that he was discriminated against because of his handicap; and (3) that the decision to terminate him was based solely on this handicap. Elstner v. Southwestern Bell Tel. Co., 659 F. Supp. 1328, 1345

(S.D. Tex. 1987), *aff'd*, 863 F.2d 881 (5th Cir. 1988).

TCHRA applies only to very severe handicaps -- "protecting persons with impairments of an incapacitating nature." Chevron Corp. v. Redmon, 745 S.W.2d 314, 317-18 (Tex. 1987). In order for a disability to be considered a handicap it must be one which is "generally perceived as severely limiting in performing work-related functions in general." Chandler v. City of Dallas, 2 F.3d 1385, 1397 (5th Cir. 1993), *citing* Chevron, *supra*. An employee is not necessarily handicapped just because he is incapable of satisfying the singular demands of a particular job. Elstner v. Southwestern Bell Tel. Co., 659 F. Supp. 1328, 1343 (S.D. Tex. 1987), aff'd, 863 F.2d 881 (5th Cir. 1988).

Although it is uncontroverted that Hall actually suffers from carpal tunnel syndrome, for which she had undergone two surgeries at the time she was fired, the evidence adduced at trial simply does not establish that Hall's carpal tunnel syndrome reached a major life activity or was substantially limiting. Hall described the difficulty and pain she suffered when she typed, braided her daughter's hair, and performed other daily chores. However, we are convinced that no reasonable jury could conclude that her situation rose to the level of a handicap under TCHRA. Hall's own doctor testified at trial that he did not consider her handicapped, and in his letter to her company and subsequent telephone conversation with Josephson, just weeks before Hall was terminated, the doctor said that she could return to work so long as she did not have to

engage in heavy lifting or full days of typing.[7] Hall's carpal tunnel syndrome simply does not rise to the level of a handicap or disability under the Texas statute. Accordingly, the jury verdict as to the TCHRA claim cannot stand.

CONCLUSION

We REVERSE and RENDER judgment in favor of Savings. Finding that the evidence does not support the jury verdict, we do not reach the other issues raised by appellant Savings. The motion to supplement the record on appeal is DENIED as moot, because the information sought to be supplemented therein pertained to an issue we do not reach.

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[7]There is no allegation that Hall's job required heavy lifting or full days of typing.