APPEAL NO. 93760

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. On July 2, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. After keeping the record open until July 30, 1993, she determined that respondent (claimant) has a compensable injury, carpal tunnel syndrome of the right wrist. Appellant (carrier) asserts that the greater weight of the evidence shows that claimant did not have carpal tunnel syndrome. Claimant replied that the evidence was sufficient to support the decision.

DECISION

We affirm.

At the hearing, the parties agreed that the issue was whether claimant developed carpal tunnel syndrome in the right wrist as a result of her work.

Section 410.204 (a) of the 1989 Act states that the Appeals Panel "shall issue a decision that determines each issue on which review was requested."

On appeal the carrier asserts that findings of fact in support of the decision are against the great weight of the evidence, stressing the absence of objective evidence of injury and the claimant's own contradictions in her testimony.

The Appeals Panel determines:

That the findings of fact are not against the great weight and preponderance of the evidence.

Claimant worked for employer for approximately two and one-half years prior to the time she complained of pain in her wrist. Part of her day's work consisted of using a computer. On (date of injury), claimant told her supervisor that her right wrist hurt. The supervisor, Mr. P, testified that from (date) into December 1992, claimant was only at work approximately 56% of the time, noting sick leave, unpaid leave, vacation and other time spent away from the job; claimant had hurt her neck at home in (date), and treatment for this was extensive. Testimony by another employee, D. G indicated that she had worked at the same job that claimant held and claimant's job required from one to four hours of computer work per day. Claimant testified that the computer did not have wrist rests until October, 1992. She described her right wrist in (date of injury), as feeling "weird"; this sensation appeared from her wrist to her palm and into her fingers. She described shaking her hand and rubbing her fingers. She added that other workers using computers with her also had problems. No testimony indicated that claimant used a computer all day at work.

Claimant saw her family doctor, (Dr. C), prior to December 2, 1992. While claimant chose not to offer any medical record of Dr. C, she did offer an MRI dated December 2, 1992, which reflects that it was done on the order of Dr. C. Claimant says that Dr. C diagnosed

carpal tunnel syndrome and referred her to (Dr. A). Claimant referred to Dr. A as a hand specialist, but his letterhead indicates plastic surgery. Claimant saw Dr. A one time on December 28, 1992. Dr. A provided an Initial Medical Report, a narrative entry, and a two page handwritten report which begins: "Re: (Claimant), (work related carpal tunnel syndrome)". Within the body of the letter Dr. A states that from the claimant's history and his examination the carpal tunnel syndrome is "moderately severe" and "developed as a direct result of her job." He then makes a statement that is very emphatic, "I am 100% sure that this condition is due to her on the job work activities." He placed her on anti-inflammatory medication, therapy, and recommended further testing and that she not work. Claimant has been seeing a chiropractor for therapy daily and then three times a week, since seeing Dr. A. She acknowledged that she was able to drive to therapy in the period of February to May 1993 but was not able to drive to work.

The carrier provided (Dr. S) (trained in Family Medicine, but practicing occupational medicine) to testify through a telephone connection. He saw claimant once in January, 1993. On the basis of claimant's history he at first believed that she had a cervical disease or nerve entrapment (comparable to carpal tunnel syndrome), but changed his mind after obtaining the results of normal EMG studies, also done in January, 1993. He did record that her work activities should not involve use of her right hand. He added that with no objective findings, it was "doubtful" that claimant has carpal tunnel syndrome. He acknowledged in response to a question that a mild case of carpal tunnel syndrome could be present even though testing showed nerve responses to be normal; it would not be "usual" to have that combination, but would be "possible", a "slim" possibility. (Dr. S did not testify that a mild case of carpal tunnel syndrome would not be reflected by the testing that claimant underwent.) On the other hand, Dr. A did record in the narrative of his December 28, 1992, visit by claimant that she "does inputting (with) key board all day." (The hearing officer found the amount of time claimant spent on the computer per day to be one to four hours, 12 1/2% to 50% of that considered by Dr. A in providing his opinion of the claimant's disease and its cause.) Mr. P, the supervisor, in addition to testifying that claimant only worked 56% of the time in the months preceding the notice of injury, indicated that claimant was offered work, which would accomodate her right wrist, answering the phone and filing. He stated that she declined this offer citing her inability to use her right hand to drive to work. Claimant did not deny giving this excuse to Mr. P.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165 of the 1989 Act. While the carrier makes several valid points on appeal, they do not require that the decision of the hearing officer be reversed. Some evidence indicated that claimant began working for employer in June, 1990, but the hearing officer did have testimony that claimant worked for employer for three years - as is reflected in a finding of fact. A hearing officer does not have to have objective evidence in order to reach a decision that an injury occurred in the course and scope of employment. *See* Texas Workers' Compensation Commission Appeal No 92030, decided March 12, 1992. A hearing officer, however, may consider objective medical evidence (*See* Texas Workers'

Compensation Commission Appeal No 92300, decided August 13, 1992), and, as trier of fact she may choose the medical opinion of one physician (expert) over the opinion of another. *See* Gregory v. TEIA, 530 S.W.2d 105 (Tex. 1975). While the credibility of the claimant may be questioned by the hearing officer, the inconsistency in claimant's testimony, concerning her inability to drive to work and her ability to drive to therapy, did not rise to the level of "a serious question as to the credibility of the claimant" reported in Montes v. TEIA, 779 S.W.2d 485 (Tex. App.-El Paso 1989, writ denied).

Similarly, the hearing officer could question why claimant did not provide any information resulting from an appointment she had with Dr. A on July 7, 1993, for which the hearing officer had held the record open until July 23, 1993; however, the hearing officer was not compelled to question claimant's inaction.

The findings of fact made by the hearing officer are sufficiently supported by the evidence. The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge