APPEAL NO. 990251

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 14, 1999. The appellant (carrier) and the respondent (claimant) stipulated that the claimant sustained a compensable injury on _____. The only issue was whether the compensable injury is a producing cause of her current right hand problems. The hearing officer made the following finding of fact and conclusion of law that are appealed by the carrier.

FINDING OF FACT

6. [Dr. C] credible July 8, 1998 report coupled with Claimant's credible testimony established a causal connection between Claimant's _____ compensable occupational disease injury in the form of a repetitive trauma injury, to the Claimant's current right hand problems.

CONCLUSION OF LAW

3. The compensable injury sustained by the Claimant on _____ is a producing cause of Claimant's current right hand problems consisting of tendinitis, carpal tunnel syndrome, overuse syndrome, metacarpal trapezial synovitis, and motor branch median nerve compression since March 18, 1997 to present.

In its appeal, the carrier emphasized evidence that it contended established that there was another cause for the claimant's current right hand problems, urged that the appealed determinations of the hearing officer are against the great weight and preponderance of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. The claimant responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. It also contains findings of fact (that more appropriately should have been included in the statement of the evidence) that consist of summaries of and quotations from medical reports. Only a brief summary of the evidence will be included in this decision. The stipulation entered into by the parties and comments by the ombudsman and the attorney representing the carrier indicate that an injury was sustained on _____; however, the claimant in her testimony made it clear that she sustained a repetitive trauma injury with a date of injury of _____. She described the repetitive nature of her work and the pain that

she had in the "meaty" part of her hand between her right thumb and wrist. She stated that the nurse at the work site placed ice on her hand; that in October 1996 she went to Dr. R, her family doctor; that he prescribed anti-inflammatory medication, use of a splint, and less use of the right hand; that he told her that not using the hand would make the problem go away; that the pain prevented her from doing her assembly work; that the nurse sent her home; and that she quit the job because of the pain. The claimant testified that about three years prior to September 1996 she joined a gymnasium; that she is a small person; that she did not exercise her arms much and mainly exercised her legs and performed aerobic exercises; that she continued to use the gymnasium after September 1996; that she did not perform exercises that caused her hand to hurt more; that during December 1996 she worked at the gymnasium six hours a day one day a week telling people how to exercise, doing a little paperwork, and performing some clean-up activity; and that the job at the gymnasium did not require repetitive use of her hand. She said that use of the anti-inflammatory and the splint and using her right hand less helped her pain, but that the pain did not go away as Dr. R told her that it would. She stated that in March 1997 she returned to Dr. R because she was tired of living with pain day-to-day and waiting for the pain to go away and that Dr. R referred her to another doctor. The claimant said that in mid-April 1997 she began working for a bank as a teller; that she used a computer and adding machine some of the time; that her pain had never gone away before she went to work at the bank; that she continued to have pain after she worked at the bank; that generally, the work at the bank did not make her pain worse; that if she used her right hand more at the bank on a busy day or at home cleaning the house, her right hand will hurt more; and that on a normal day, activity does not cause her hand to hurt, it just hurts.

At the time of a benefit review conference, the medical evidence on whether the compensable injury with a date of injury of _____, is a producing cause of the claimant's current right hand problems was conflicting. The benefit review officer directed that the claimant be seen by Dr. C so that he could diagnose her current right hand problems and render an opinion whether the compensable injury with a date of injury of _____, is a producing cause of those problems. In a report dated July 8, 1998, Dr. C stated that he reviewed the medical records of the claimant, examined her, and related the condition of her right hand to her original repetitive trauma injury in September 1996.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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). If sole cause had been an issue, the carrier would have had the burden of proof. The hearing officer found the report of Dr. C, the neutral doctor appointed by the benefit review officer to render an opinion on the disputed issue, and the testimony of the claimant to be credible.

The appealed finding of fact and conclusion of law are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge