APPEAL NO. 990264

This appeal arises 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 15, 1999. With respect to the issues before him, the hearing officer determined that the respondent's (claimant) compensable injury is a producing cause of her cervical injury and that the appellant (carrier) timely contested the compensability of the cervical injury and, therefore, did not waive its right to do so. In its appeal, the carrier argues that the hearing officer's determination that the claimant's compensable injury includes a cervical injury is against the great weight and preponderance of the evidence. The appeals file does not contain a response to the carrier's appeal from the claimant. The claimant also did not appeal the determination that the carrier had timely contested compensability of the cervical injury.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a bilateral carpal tunnel syndrome injury with a date of injury of _____. Because only the issue of whether the neck injury is part of the compensable injury is before us on appeal, our factual recitation will be limited to those facts most germane to that issue. The claimant testified that on _____, her hands became numb and stiff and her forearms became swollen, while she was working for a printing company. The claimant stated that she performed constant, repetitive motions with her hands in operating a machine used in "jogging, cutting and padding" documents. In addition, she stated that she constantly moved her head from side to side and that she was required to do a lot of heavy lifting.

The claimant treated with various doctors and Dr. F eventually became her treating doctor. The claimant had her initial appointment with Dr. F on March 18, 1998. Dr. F stated that he wanted to get x-rays of her wrist and cervical spine "to rule out any possible radicular component to her presentation." On March 30, 1998, Dr. F ordered an MRI of the cervical spine. The March 31, 1998, cervical MRI revealed small disc bulges at C3-4 and C5-6, and a small disc protrusion at C4-5. In progress notes of April 3, 1998, Dr. F stated:

> I did get an MRI through her private health insurance which shows her to have a ruptured disc at C3-4 and bulges at C5-6. Based on this, it may, in fact, be part of the compensable injury and we will leave it up to the carrier to decide.

In progress notes of November 16, 1998, Dr. F provides:

> Referable to her cervical spine, apparently this is being contested and my opinion has been sought. I would like to point out that the type of injury this patient has sustained is a repetitive motion situation. By this, it is meant that

> there is a gradual onset of symptoms. To relate it to a specific date and time is impossible, however, that does not preclude or exclude the overall presentation. In my opinion, it is totally probable that her neck complaints are part and parcel of the repetitive motion situation. Close questioning of her job indicates that it did involve a lot of repetitive and manual activity, pushing and pulling repetitively, lifting and carrying to a dumpster, etc. Therefore my conclusion as indicated above.

Dr. F referred the claimant to Dr. D for additional treatment. In his July 1, 1998, report, Dr. D notes that the claimant has "a number of interrelated upper extremity and neck problems." Dr. D concluded that report by stating that he was going to proceed with a left carpal tunnel release and that after surgery, he and the claimant would "make a decision then regarding whether to pursue further workup for pain generators in her neck, or do her right carpal tunnel." In his September 28, 1998, report, Dr. D opined that "[t]his patient's neck symptoms are related to her injury. She was not having any problems before she hurt herself at work. It is clear from her history that they are related."

Dr. U examined the claimant at the request of the carrier. In his report of October 27, 1998, Dr. U opined:

> I do not think there is any major problem with her neck. From today's examination, she would appear to be exaggerating her complaints and her loss of pinprick, for example, in the hands is not an anatomical one which would [make] me suspicious that depression is a major factor. [Emphasis in original.]

The carrier argues that the hearing officer's determination that the claimant's compensable injury was a producing cause of her cervical injury is against the great weight and preponderance of the evidence. That issue presented a question of fact for the hearing officer to resolve. Generally, an extent-of-injury issue can be established on the basis of the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mutual Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). We reject the carrier's contention that expert medical evidence is required to prove causation in cases where a back/neck injury is claimed as a result of repetitively traumatic activities at work. To the contrary, in accordance with Texas Employers' Ins. Ass'n v. Ramirez, 770 S.W.2d 896 (Tex. App.-Corpus Christi 1989, writ denied), we believe that expert evidence of causation is not absolutely required. In Ramirez, the plaintiff alleged that she had sustained a back injury as a result of engaging in repetitively traumatic activities at work. Specifically, she claimed that her back injury was caused by repetitive bending and twisting she was required to perform in order to iron on a low ironing board. The Ramirez court held that the testimony of the plaintiff and her co-workers was sufficient for the jury to find she suffered an injury in the form of an occupational disease resulting from repetitious trauma. In so finding the Court of Appeals stated:

> Appellee's testimony and that of her co-workers is sufficient to establish a causal connection between the specific activities of her work and her

> condition. The type of disease with which we are dealing is not one of unknown or mysterious etiology which requires expert medical testimony to establish causation; rather, it is a condition within the general experience and common sense of persons generally, so that it is appropriate to allow the jury, as fact finder, to know or anticipate that the condition could reasonably follow the specific events.

Id. at 901; *see also*, Texas Workers' Compensation Commission Appeal No. 950025, decided February 21, 1995 (claimant's testimony alone sufficient to support finding of a neck injury); Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993 (noting that we were unaware of a requirement that back injuries be proven by expert medical evidence); and Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992 (where we determined that a repetitive trauma back injury did not fit within the narrow exception requiring expert medical evidence of causation).

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence under Section 410.165(a). A review of the hearing officer's decision demonstrates that he considered the claimant's testimony about the repetitive activities she performed at work in conjunction with the medical evidence from Dr. D, Dr. F, and Dr. U and decided to give more weight to the evidence demonstrating that the compensable injury was a producing cause of the claimant's cervical injury, rather than the evidence that it was not. The hearing officer was acting within his province as the fact finder in so resolving the conflicts and inconsistencies in the evidence. Our review of the record does not demonstrate that the hearing officer's extent-of-injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to reverse that determination on appeal.

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge