APPEAL NO. 990421

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 February 9, 1999. The appellant (carrier) and the respondent (claimant) stipulated that on Injury 2, the claimant sustained a compensable injury. The hearing officer determined the claimant sustained an injury to her cervical spine as the result of her repetitive work as a data processor for the employer and that her compensable injury extends to an injury to the cervical spine. The carrier appealed, urged that the claimant failed to present sufficient evidence to establish that her cervical degenerative condition is related to her compensable injury and that the great weight of the evidence is against the decision of the hearing officer, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant's compensable injury does not include the cervical spine. 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 claimant testified that she worked for the employer, a telephone company, for about 19 years; that she used a computer to enter orders; that her main function is typing on a computer; that after sitting at a computer for eight hours, she would feel stiffness and discomfort in her neck, but never really associated the neck problem with her arm and wrist; that she first went to Dr. CC about her right wrist on Injury 2; that she could not remember when her neck problems started, but that she thought that it was about one year before she went to Dr. CC because of the problem with her right wrist; that the pain and numbness goes from her hand and wrist up to her arm and shoulder; that her pain is in the middle of her neck; and that she has not had problems in her left upper extremity. She said that she did not relate her neck condition to her work, that the doctors she saw did, and that she relied on their opinions. The claimant stated that she was involved in a motor vehicle accident in injury 1, that the other driver failed to yield the right of way, that she was not rear-ended, that her neck was not injured in the automobile accident and she did not receive treatment after the accident, that she does not recall if she reported a neck injury, and that she did not tell any of the doctors about the automobile accident because it did not enter her mind to tell them about it. She testified she does not know of anything other than her work that could have caused the neck problem.

At the direction of Dr. CC, the claimant received physical therapy. In a report dated July 13, 1998, Dr. RC stated that electromyography and nerve conduction studies did not reveal evidence of carpal tunnel syndrome. In a note dated October 26, 1998, Dr. CC stated that he had treated the claimant's right hand and wrist conservatively, that her condition had not improved, and that he recommended that her cervical spine be evaluated. In a narrative attached to a Report of Medical Evaluation (TWCC-69) dated October 13, 1998, Dr. P stated that he thought that the claimant had not reached maximum medical

improvement and that her symptomology was consistent with nerve compression in the neck with radicular-type pain and how it was related to her work. In a letter to the carrier dated October 27, 1998, Dr. P explained why he thought that the claimant had a cervical problem that was related to her work and said that Dr. B agreed with him. At the request of the carrier, the claimant was seen by Dr. S. In a letter dated December 14, 1998, he answered questions asked by the carrier. He said that having been seated at a computer, the claimant was as likely to develop upper extremity symptoms from a disc problem in the cervical areas as she was to develop tendinitis in the wrist and that in his opinion her major problem has been in the cervical spine and it needs treatment. Dr. BC performed an MRI on January 13, 1999, and reported the following:

> C5/6 - At C5/6, there is a focal small midline disc bulge which impresses minimally upon the anterior aspect of the thecal sac without causing significant stenosis. There is no neural foraminal stenosis identified.
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> C6/7 - At C6/7, there is midline and left small disc herniation which encroaches mildly upon the anterior aspect of the thecal sac. This appears [to] encroach mildly on the left sided neural foramen and its inferior aspect but does not definitely impress upon the exiting nerve root. The neural foraminal appear non-stenotic.

In a letter to the attorney representing the carrier dated January 29, 1999, Dr. BC said that without a series of examinations it is difficult to assign a cause for the cervical changes; that the levels involved commonly have standard degenerative changes; that the claimant is younger than normal patients seen with such degenerative changes; that if she had focal findings of nerve root impingement, foraminal narrowing, or spinal stenosis secondary to a disc herniation, a good case could be made for an acute event such as might occur during manual labor; that that does not appear to be the case since focal findings are on the left side which is opposite her symptomology; and that in his opinion the findings on the MRI are those of degenerative disc disease more along the lines of normal wear, tear, and aging. In a letter to the attorney representing the carrier dated February 2, 1999, Dr. S answered questions, stating that he had reviewed the MRI report, that he felt that the work injury was the basis for her current symptoms, that in his opinion her symptoms were neck based from the first but attention was directed toward her hand, and that her symptoms and physical findings are very consistent with a cervical disc problem with radiculopathy.

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. 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). In a case such as the one before us where both parties presented evidence on the disputed issue, the hearing officer must look at all of the relevant evidence to make factual determinations and

the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The carrier made essentially the same arguments at the hearing as it makes on appeal. The hearing officer considered the evidence and those arguments and determined that the claimant sustained an injury to her cervical spine as the result of her repetitive work as a data processor for the employer. That determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Elaine M. Chaney
Appeals Judge