

APPEAL NO. 990455

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 10, 1999, a contested case hearing (CCH) was held. With regard to the issues before him, the hearing officer determined that respondent (claimant) sustained a compensable occupational disease, bilateral carpal tunnel syndrome (BCTS) on _____ (all dates are 1998 unless otherwise stated), and that claimant had disability from _____ to January 10, 1999.

Appellant (carrier) appeals, contending that claimant's duties were insufficiently repetitive to cause an injury, that a carrier-selected physician opined that claimant did not have BCTS, that claimant's doctors "lacked credibility and validity" and that the hearing officer failed to comment on the claimant's doctor's lack of credibility and validity. Carrier also asserts that the hearing officer "failed to acknowledge any of the decisions Carrier spoke of," namely Texas Workers' Compensation Commission Appeal No. 962650, decided January 31, 1997. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. Claimant responds, urging affirmance.

DECISION

Affirmed.

Claimant testified that he was employed as a customer service representative for (employer) since 1997. Claimant testified that he worked eight or nine hours a day, usually five, but sometimes six days a week, sitting, typing and operating a computer, taking new customer's orders. There was considerable testimony, both from claimant and Ms. D, employer's customer service supervisor, exactly on the extent of claimant's typing and computer use. Claimant testified that while perhaps he was not constantly typing entries, his job duties included using the computer mouse and going from screen to screen. It appears to be undisputed that claimant worked in excess of 50 hours a week. Claimant testified that he had a head set, took orders, made the appropriate entries at the computer and was provided with a one-hour lunch period and two 15-minute breaks.

Claimant testified that on (day before the date of injury) he began to have pain in his wrists, that overnight the pain became worse and that he sought medical attention the next day (_____) from Dr. V, on the recommendation of his fiancée. In evidence are 81 pages of "S.O.A.P." notes from Dr. V, beginning September 9th through December 9th, and a report dated December 12th, giving a history of an injury on _____, with work of "repetitively typing." Dr. V diagnosed carpal tunnel syndrome (CTS), "closed dislocation of wrist" and edema. After some conservative treatment, claimant was referred to Dr. B, for further testing. EMG and nerve conduction studies were performed. In a report dated October 6th, Dr. B commented:

We are seeing evidence consistent with a [BCTS], manifested by a bilateral prolongation of median motor wrist latency, a bilateral delay in median motor

conduction velocity across the mid palm to wrist segment and, finally, by a bilateral prolongation of median sensory wrist latency versus both radial and ulnar sensory wrist latency at equal distance.

In another report, dated November 3rd, after EMG testing, Dr. B writes "[w]e are seeing evidence consistent with a [BCTS], manifested by the significant increase seen in polyphasic motor unit activity in the abductor pollicis brevis bilaterally." In a report dated December 16th, Dr. V writes:

[Claimant] has been under my care of [BCTS] since _____. At all times since that time (and continuing to present) he has been unable to work in any capacity. [Claimant's] symptoms have improved under my conservative care, it is however, my opinion that he maybe a surgical candidate and as such I am referring him for a surgical consultation.

Claimant testified that he did not desire surgery, that his symptoms have improved with conservative care and that he was able to return to work on January 10, 1999.

Claimant was seen by Dr. M, who testified that he is a chiropractic neurologist, for an independent medical examination (IME). In a report dated December 1st, Dr. M recites a history of painful wrists, treatment by Dr. V, and NCV and EMG studies by Dr. B which "both show evidence of [BCTS]." Dr. M's assessment in the report was that:

The claimant does not seem to have [CTS] on neurological evaluation. He may have a mild repetitive strain injury of the hand, which should have resolved by now. He has normal range of motion and no neurological findings. The NCV/EMG presented does indicate moderate [CTS], but the symptoms and signs are not present. He has reached a level of maximum medical improvement with 0% impairment.

Dr. M testified at the CCH that claimant does not have CTS and disagrees with the findings of Dr. V and Dr. B because claimant's "Falens [sic, Phalen's] Test" and "Tinel's Test" were normal and because claimant did not have the muscle atrophy that one might expect with BCTS. Dr. M opined that claimant could have a "repetitive strain injury." Dr. M attacks the credibility of Dr. V's and Dr. B's reports because during the prior six months, the carrier has referred some 20 to 25 cases of CTS to Dr. M for a peer review and that Dr. V and/or Dr. B have been the treating doctor "a higher number of times than any of . . . other claimants' treating doctors" and that Dr. V and/or Dr. B always come up with abnormal diagnostic studies. Claimant points out that the only cases that are in dispute and receive an IME review are those cases where there are injuries and that carrier does not request an IME where the treating doctor has not found an injury. Dr. M testified that six to eight weeks conservative treatment would have been adequate for claimant's repetitively strained wrists.

Ms. D testified that the employer recognizes the possibility of repetitive trauma injuries and goes to considerable lengths to avoid those injuries. Ms. D testified that claimant's workstation was ergonomically correct and that the employer provides state-of-the-art equipment. Ms. D also testified, based on the calls claimant received, that claimant types only three to five words a minute, while certain studies would indicate that one must type 60 words a minute to be at medium risk of CTS.

Nonetheless, the hearing officer found that claimant sustained a BCTS injury due to typing at a computer keyboard performing job-related functions. Carrier contends that claimant's "job is simply not repetitive enough to cause the physical harm or damage as alleged." As the carrier recognizes, we have many times held that Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). In this case, carrier is simply asking us to substitute our judgment for that of the hearing officer, something we have many times held we would not do. Whether to believe claimant, Dr. V and Dr. B, or Ms. D and Dr. M is strictly a factual determination for the hearing officer to resolve. Our standard of review, as noted by carrier, is whether the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In this case, where two doctors and diagnostic testing indicates that claimant has BCTS as opposed to one doctor saying that claimant, perhaps, only has a mild repetitive strain, we cannot say the hearing officer's decision is against the great weight and preponderance of the evidence.

Carrier attacked the credibility of Dr. V and Dr. B through the testimony of Dr. M. As previously noted, Dr. M testified that he was discounting Dr. B's EMG testing on the basis that he had never seen a normal EMG from Dr. B. As we noted, it would seem that, normally, Dr. M would not be asked to do an IME where Dr. B had found no injury and, therefore, it would stand to reason that all Dr. B's tests that Dr. M was asked to review would be abnormal. In any event, these arguments were made to the hearing officer and it is the hearing officer who is the sole judge of which doctor's opinion was correct. The hearing officer's decision is supported by sufficient evidence on this point.

Carrier also contends that the hearing officer "failed to even comment on this lack of credibility" and failed to mention "the questionable credibility and validity of the physicians involved" On this point, we would only note that the hearing officer is not required to comment on the credibility of the witnesses and, further, in this case, one can clearly infer that the hearing officer did not find Dr. M's testimony persuasive. We further point out that Section 410.168 only requires the hearing officer to make written findings of fact,

conclusions of law and a determination and award of benefits, which he did. We find no error on this point.

Finally, carrier complains that the hearing officer "failed to acknowledge any of the decisions the Carrier spoke of." Our review of the record discloses that carrier cited only one Appeals Panel decision, Appeal No. 962650, *supra*. That case has been cited for the proposition that "to establish a repetitive trauma injury, a claimant must prove not only that repetitive traumatic activities occurred on the job, but also that there was a 'causal link' between the activities and the claimed injury." See Texas Workers' Compensation Commission Appeal No. 972216, decided December 15, 1997. The Appeals Panel affirmed the hearing officer's decision in Appeal No. 962650, *supra*, on this point, stating "that a claim of repetitive trauma injury should be supported by evidence of the extent and nature of the work performed and some description of the repetitive activities involved that would affect the employee in a way not common to the general population," citing Texas Workers' Compensation Commission Appeal No. 92272, decided August 6, 1992. Claimant and Ms. D testified in detail concerning the nature of claimant's typing and computer duties and, while carrier did not believe those typing duties were sufficient to support a finding of a repetitive trauma injury, the hearing officer obviously thought differently. The hearing officer's decision is supported by claimant's testimony and, for that matter, even Dr. M's testimony that those duties could cause a mild repetitive trauma strain, just not CTS. We are unwilling to say that the hearing officer's determination is either wrong as a matter of law or so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. Cain, *supra*. (We do note that Appeal No. 962650, *supra*, was remanded on other grounds.)

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge