APPEAL NO. 990472

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 29, 1999. He determined that the appellant (claimant) did not sustain an occupational disease (repetitive trauma injury) on _____. The claimant appeals this determination, contending that she produced unrebutted medical evidence of a repetitive trauma injury--left carpal tunnel syndrome (CTS) and tenosynovitis--and the respondent (carrier) failed to produce any evidence of any other cause of her condition. The carrier replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant, who is right hand dominant, worked as a customer service representative. She described her duties as receiving incoming calls and responding to customer concerns. The job involved use of a monitor and the input of data by keyboard and computer "mouse." She said that her problems began in August 1998 when her left hand started falling asleep. On _____, she said, she experienced sharp pain in her left wrist and numbness. Much time at the CCH was devoted to quantifying the amount of typing she did. (It was not clear whether she used her left or right hand to maneuver the "mouse.") The claimant testified that she received about 125 calls per day, which amounted to about six and one-half to seven hours per day, not all of which involved typing. In a prior recorded statement, the claimant said she was "continuously typing something into the computer." Ms. D, the supervisor, testified that the workers do not type all the time and that the claimant did less work than other workers.

The claimant first received treatment from Dr. M, D.C., on September 15, 1998. Dr. M diagnosed left CTS and medial nerve entrapment. In an undated letter to the claimant's attorney, Dr. M wrote that the claimant "reported that her job duties consist of a minimum of eight hours of computer keyboarding per day with frequent mandatory overtime." Dr. M also commented in her letter that a return to claimant's job for four hours caused a "reflare of her condition . . . leaving little doubt that her condition is directly a result of her repetitive job duties." Dr. M also testified by telephone at the CCH that her diagnoses were confirmed by EMG studies performed by Dr. N and that, without doubt, the cause of the CTS and medial nerve entrapment was the claimant's work "because I see it all the time." On cross-examination, she responded that she has never related CTS in any patient to anything but work. The actual report of Dr. N reflects a bilateral normal response for CTS and a "very mild hyperesthetic condition" of the left ulnar and median nerve. Dr. T, a referral doctor, in a report of a January 20, 1999, examination, assessed left CTS with compression of the median nerve in the wrist. He also noted that according to her history, the claimant "spends most of the day typing . . . ."

The claimant had the burden of proving that her left CTS and tenosynovitis were caused by her work activities. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Although a diagnosis of CTS must be based on expert medical evidence, we have routinely held that the cause of the CTS, or repetitive trauma wrist injury, can be established by the testimony of the claimant alone if found credible by the hearing officer. *See, e.g.,* Texas Workers' Compensation Commission Appeal No. 961008, decided July 1, 1996; Texas Workers' Compensation Commission Appeal No. 941077, decided September 26, 1994. In this case, the hearing officer found that "[o]n _____, Claimant's work for Employer did not cause her to develop [CTS] and/or tenosynovitis." Finding of Fact No. 2. Based on this finding, the hearing officer concluded that the claimant did not sustain a compensable injury. Conclusion of Law No. 3. We assume for purposes of this appeal only, that Finding of Fact No. 2, although subject to differing and inconsistent inferences, contains an implicit finding that the claimant does have CTS and/or tenosynovitis.

The claimant argues on appeal, that where there is a question of "whether the amount of work was sufficient to cause [CTS], medical evidence can provide the necessary casual [sic] link." She further asserts that her medical evidence has done just that and, because the carrier produced no evidence of any other cause, the hearing officer's decision is contrary to the great weight and preponderance of the evidence and should be reversed. We agree that the hearing officer must consider medical evidence in this case on the question of causation. Texas Workers' Compensation Commission Appeal No. 990539, decided April 14, 1999. However, as sole judge of the weight and credibility of the evidence pursuant to Section 410.165(a), the hearing officer was not required to accept or find this evidence credible. Texas Workers' Compensation Commission Appeal No. 93819, decided October 28, 1993. We cannot agree with the claimant that her medical evidence and testimony established a prima facie case that somehow shifted to the carrier the burden of disproving that the claimant's work activities caused this injury. Finally, the claimant argues that the existence of symptoms only at work, as suggested in Dr. M's undated letter, makes "clear" that she sustained a work-related injury. This evidence could be accepted or rejected by the hearing officer. In his discussion of the evidence, the hearing officer commented that the claimant was "not persuasive" in her assertion of a work-related injury. He further commented that the claimant tended to exaggerate the time she spent typing on the job. The record contains varying assertions about how much time was spent in data entry activities. There was virtually no evidence as to the amount of usage of the nondominant left hand. To the extent that the various medical opinions, in particular Dr. M's assertion that in her experience CTS is always work related, depended on the assertions of the claimant, the reliability of the opinions reached became questionable. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility and persuasiveness of the evidence for that of the hearing officer. Rather, we find the evidence sufficient to support his

determination that claimant did not meet her burden of proof and did not sustain a compensable injury.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Robert W. Potts
Appeals Judge