APPEAL NO. 990497

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 2, 1999, a contested case hearing (CCH) was held. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable occupational disease injury to the left shoulder and left wrist and that claimant had disability from August 5, 1998, through the date of the CCH.

Appellant (carrier) appealed, basically arguing that the hearing officer's decision is against the great weight and preponderance of the evidence and requesting that we reverse the hearing officer's decision and render a decision in its favor. The file does not contain a response from the claimant.

DECISION

Affirmed.

First, we will note that there is substantial medical evidence, much of which can be subject to differing interpretations. It is also obvious that claimant has a long history of various complaints and workers' compensation injuries over the years, including right wrist carpal tunnel syndrome (CTS) in 1995 and an ankle and back injury in 1997. In evidence are the employer's nurse's station notes which carrier represents contain some 20 separate workers' compensation injuries (many of them very minor) since June 1988. We count 91 different entries or visits to the nurse's station for both work and nonwork-related injuries since June 2, 1988.

Claimant testified that she is a lead manufacturing operator for (employer) and has worked for the employer for over 24 years assembling, repairing, inspecting, packaging and testing computer "modules," which appear to be a circuit board. Claimant explained in detail that the modules weighed between one to three pounds, how she grasped them, what she did, that she worked from 40 to 60 hours a week and that on the average she processed, in one manner or the other, about 300 modules a day. In evidence are 22 color photographs, which claimant narrated and explained, showing how one worked with the modules, and how they were processed, packaged and transported.

Regarding a (prior date of injury) injury (not at issue here), a bone scan done in relation to a right-hand CTS injury also noted some "left sided findings" and that clinically claimant had "a positive Phalen's test in the left wrist." Claimant testified that she was unaware of that report until after she filed her claim for the current (subsequent date of injury), injury. Ms. L, employer's occupational health nurse, testified that a Phalen's test is not as specific as electrodiagnostic testing, but does suggest further CTS testing. Claimant testified that on (subsequent date of injury), while repairing a module, she felt pain in her

left shoulder and had a shooting pain into her neck and down her left arm. (A prior injury apparently also included a herniated cervical disc.) Claimant also testified that she had some "localized" pain in her left wrist at that time. Claimant testified that she is naturally right-hand dominant, but since her 1995 right wrist injury, she has trained herself, and adjusted her work station, to do most of her job duties left-handed. Claimant testified that on (subsequent date of injury), she went to the nurse's station and reported her left shoulder injury. She said that as she was getting off the examining table, her left wrist began to hurt and she advised the nurse of that fact but it was not recorded.

Claimant went to see her doctor on (subsequent date of injury). The testimony appeared to develop that Dr. G, Dr. Dr. E, and Dr. H were in practice together and, while claimant may have been seen by one doctor, another may have actually signed the report or had his signature block on the report. In an Initial Medical Report (TWCC-61) of the (subsequent date of injury) visit, Dr. G recites a history of "doing inspection/repair work that involved repetative [sic] motion when she felt a sharp pain in her neck and across her left shoulder down to her wrist and in her mid back." The TWCC-61 notes that claimant had some similar symptoms on August 26, 1992, and _____. X-rays were negative and Dr. G diagnosed a "left shoulder interarticular derangement" and "left [CTS]." Claimant was taken off work on (subsequent date of injury). Dr. E, in a note dated November 13, 1998, describes claimant's duties as being a "repetitive motion injury." In a narrative report dated December 8, 1998, Dr. E discusses claimant's job duties and CTS, and comments that the repetitive nature of claimant's duties "most likely" caused her wrist problems and that "electrodiagnostic studies are required to make a definitive diagnosis." Dr. E goes on to say that the etiology of claimant's shoulder complaints "is less clear." Dr. H treated claimant for cervical and neck complaints in October and November 1998. A neurological consult by Dr. W on January 7, 1999, recites claimant's work history, complaints, results of his examination and electrodiagnostic testing and concludes with the impression:

> Bilateral mild [CTS] secondary to repetitive motion. Mild C5 radiculitis. Bilateral wrist sprain tendinitis, elbow sprain and shoulder sprain.

Claimant testified that at times her left shoulder, arm and hand would get cold, turn blue, and she should have "achy palms." Exactly when this condition would occur is not clear and, apparently, the condition would come and go.

Claimant was examined by Dr. B, carrier's independent medical examination doctor, who, in a report dated January 5, 1999, noted claimant's long history of similar symptoms, the positive 1995 Phalen's test, that "EDS was not performed" at that time, that claimant had a history of bilateral CTS "for more than three years" (apparently concluding the 1995 right-side examination also showed a left-sided CTS), and concluded that "[t]here is no objective evidence at this time of pathology related to the injury of (subsequent date of injury)." (Dr. B did not have Dr. W's January 7, 1999, report with the results of the electrodiagnostic testing.) Dr. B states that "[claimant's] current problems represent a

continuation of pre-existing problems/injuries. I could find no evidence that a new injury or any additional impairment resulted from the (subsequent date of injury) claim."

Carrier, at the CCH, pursued Dr. B's conclusion, arguing that claimant had not sustained a new injury on (subsequent date of injury), that claimant's left wrist CTS was diagnosed in 1995 and that claimant was only experiencing a flare up of a preexisting condition. Carrier contends that there was no objective medical evidence of a left shoulder injury.

An occupational disease is "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. . . . The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). A repetitive trauma injury is "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." Section 401.011(36). An employee must prove, by a preponderance of the evidence, the compensability of an occupational disease. Texas Workers' Compensation Commission Appeal No. 960582, decided May 2, 1996, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). "[O]ne must not only prove that recurring, physically traumatic activities occurred on the job, but must also prove that a causal link exists between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared to employment generally." Texas Workers' Compensation Commission Appeal No. 950868, decided July 13, 1995, citing Davis v. Employers Insurance of Wausau 694 S.W.2d 105 (Tex. App.-Houston [14th Dist] 1985, writ ref'd n.r.e.).

In this case, the evidence was conflicting. Although claimant had a number of prior injuries, the hearing officer could find that based on claimant's detailed description of her job duties, as illustrated by color photographs, that claimant had sustained a new repetitive trauma injury to her left upper extremity. Claimant's testimony is supported by the reports of Dr. G, Dr. E and Dr. W's consultation assessment. While there is evidence that as early as 1995 claimant was noted to have some evidence of left CTS by way of a positive Phalen's test, the hearing officer could find that no such positive diagnosis was ever made prior to (subsequent date of injury), and, further, that the uncontroverted testimony was that claimant was not aware of the positive left hand Phalen's test until after (subsequent date of injury). Similarly, Dr. G and Dr. W assess a left shoulder sprain which, at least, Dr. G attributes to claimant's work. 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 as well as the weight and credibility that is to be given 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 Company 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). We find sufficient evidence to support the hearing officer's decision.

Carrier's appeal of the hearing officer's findings of disability are predicated entirely on the fact that claimant had not sustained a new repetitive trauma injury on (subsequent date of injury). In that we are affirming the hearing officer's decision on that point, we likewise affirm the hearing officer's findings on disability as being supported by claimant's testimony and Dr. G's medical evidence.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are 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). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Alan C. Ernst
Appeals Judge