APPEAL NO. 990509

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 February 11, 1999. The issues at the CCH were whether the respondent (claimant) sustained an injury in the course and scope of employment on _____, and whether the claimant had resulting disability. The hearing officer determined that the claimant did sustain an injury in the course and scope of her employment on _____, and that she had disability from May 1, 1998, to the date of the hearing. The appellant (carrier) asserts error in several findings of fact and conclusions of law, urging that the claimant's testimony was not credible and that there was irrefutable evidence that the accident could not have occurred as claimed by the claimant and, thus, she did not have disability. The claimant responds that the determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and that the decision should be affirmed.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth fairly and adequately the pertinent evidence in this case and it will only be briefly summarized here. Succinctly, the claimant testified, through an interpreter, that on _____, while performing her job on a machine putting nuts on studs, she sustained an injury. She testified that the machine started accelerating strongly when she was putting a nut on a defective bolt and that, when the machine sped up, it threw the nut and bolt up and pushed her arm back over her head causing pain in her left arm and cervical/shoulder area. She stated that the incident tore the gloves she was wearing. She told coworkers about her pain that day but continued working although, she stated, she was in pain. A supervisor was told of the matter two or three days later (although details of the incident were apparently not covered or reported at the time) and the claimant went to the employer's health care provider who, she stated, put her on restricted duty and prescribed therapy. The diagnosis was right shoulder pain with other diagnosis of pain in her neck, elbow, and right arm. The claimant stated she did return to work light duty temporarily, continued having pain, and was taken off work when she went to Dr. J on May 1, 1998. Dr. J assessed a right shoulder, elbow, and wrist sprain, and noted to rule out cervical herniated nucleus pulposus. It is not clear that diagnostic tests were performed and it was asserted the tests were not approved by the carrier. In any event, the claimant continued treatment with Dr. J, who kept her off work and related the injury to the described work incident, although there were some discrepancies in the weight of the bolt and details of the mechanism. The claimant stated that, on the day before the CCH, she had gone to Dr. S, who indicated surgery was possibly needed.

The carrier introduced testimony, an engineering report, and a demonstration video which, it urges, prove that the claimant's description of the mechanism of her injury was not possible. A couple of witnesses testified that the type of mechanism and injury reported by

the claimant had never occurred, to their knowledge, and stated that the weight of the stud and nut were 8 to 10 pounds and not a greater weight, as stated by the claimant at different times. The person conducting the engineering report stated that he had conducted tests and checked the torque of the type of machine used and did not believe it possible that the machine in use could have caused the type of force or produced the torque required to cause the claimant's arm to flip over her head and result in any injury. He indicated that, during the testing, the accident described could not be repeated. The video showed the operation involved and demonstrated that, although the machine turned the nut at a rather rapid pace, it could be stopped by hand and, if a nut did not thread on the stud, it tended to flip across the table used for the procedure. Although these witnesses generally did not think the claimant's version of the mechanics of the incident could occur, it was acknowledged that anything was possible.

The hearing officer, noting in her discussion that the claimant does not speak English and that her information to the employer and doctor had to be interpreted, stated that she found the claimant to be credible in setting forth how the injury to her occurred. And, although the accident could not be repeated on testing, she concluded there was sufficient evidence of an upward motion of the items in the die cast used and that the items could be kicked out. Clearly, there was considerable conflict in the evidence before the hearing officer and she had the responsibility to resolve those conflicts. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In doing so, she found the claimant to be credible and, in weighing the evidence in the case, apparently gave preponderant weight to her testimony. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Although inferences different from those found most reasonable by the hearing officer find support in the evidence, this is not a sound basis to reverse her factual determination. Salazar, *et al.* V. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). We have reviewed all the testimony and evidence, including the engineering report and video, and recognize that, factually, this case could be described as

very close. However, only were we to conclude from our review of the evidence, which we do not here, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb the decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Accordingly, the decision and order are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge