APPEAL NO. 990638

Following a contested case hearing held on March 2, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury in the form of an occupational disease with a date of injury of _____, and that she had disability resulting from that injury from August 20, 1998, and continuing through the date of the hearing. The appellant (carrier) has appealed, asserting that the appealed findings and conclusions lack sufficient support in the evidence because claimant greatly exaggerated the extent to which she used her hands repetitively at work and because it was not until months into her medical treatment that mention was first made in her medical records of the relationship of her carpal tunnel syndrome (CTS) to her work. The file does not contain a response to the appeal from claimant.

DECISION

Affirmed.

Claimant testified that for approximately three years before _____ (all dates are in 1998 unless otherwise stated), she was employed by (employer) as a sales support secretary; that she worked five days a week from 8:30 a.m. to 2:30 p.m.; and that she had no hobbies that involved the repetitive use of her hands nor does she have a home computer. She stated that her work involves entering sales quotes data received from four salesmen onto computer forms or templates; entering marketing data into the computer; making telephone calls; opening boxes of product literature and stocking the contents on shelves; operating the fax machine; making copies; and mailing various materials, which includes typing and printing out the labels, stuffing and sealing the envelopes, and running them through a postage machine. Claimant estimated that she spent approximately three hours a day performing data entry on the computer keyboard and did 60 to 100 mailouts a day.

Claimant further testified that towards the end of June, she began experiencing symptoms in her hands but thought nothing of it; that when the fingers on her right hand became numb, she got worried and made an appointment to see a doctor; that she went on vacation the first week of August and when she returned saw her family doctor, Dr. RS, on August 14th; that Dr. RS referred her to Dr. F for an EMG; and that Dr. F told her she had CTS, said it had to be something she did repetitively, and asked her about what she did for a living and the hours she worked. Dr. F's _____ report states the impression as severe right CTS and evidence of CTS on the left. Claimant said she told her supervisor, Ms. T, on _____ about the EMG and Dr. F 's feeling that the CTS was related to her job; and that she was seen by a company doctor, Dr. N, who referred her to Dr. B, a surgeon, who told her she needed surgery on her right hand. She stated that she commenced conservative treatment from Dr. V, a chiropractor, sometime in September because she is a controlled diabetic and was reluctant to undergo surgery. By December, she realized she

would have to have surgery because Dr. V's conservative treatment only temporarily alleviated her symptoms.

Dr. F's January 12, 1999, report states the following: "Given that claimant is a diabetic, one could assume that her neuropathy is due to her diabetes. However, other causes may still need to be considered, i.e. thyroid abnormalities." Dr. B wrote on January 18,1999, that claimant is his patient; that she is currently being treated for severe CTS on the right and is tentatively scheduled for surgery on February 2, 1999; and that it is his opinion that her CTS "is a work related injury." In an undated report transmitted by fax on November 3rd, Dr. V stated that claimant is under his care for her CTS injury; that she works part time in a position that requires repetitive use of a telephone and keyboard; and that in his opinion, her injury is the result of her duties at work for the past two to three years and not in any way to her diabetes. Dr. V's Initial Medical Report (TWCC-61) dated September 4th reflects the date claimant may return to limited-type work as "undetermined" and the date of her return to full-time work as November 30th. Dr. V's treatment records reflect claimant had daily treatment for some period of time in September and was seen three times a week in October. Dr. V wrote on January 19, 1999, that in his opinion, claimant is unable to work in any capacity and that her CTS is a work-related injury.

Claimant further testified that she was not sure which doctor took her off work but thinks it was the company doctor. The November 19th report of Dr. S, who examined claimant for the carrier, reflects that on August 24th Dr. N diagnosed CTS, referred her to Dr. B, and placed her on light duty with a splint. Claimant stated that no one has told her she can return to work and that she does not feel she can return to work because her wrists hurt and she cannot feel the ends of her fingers. She commented that she cannot even wash her hair or the dishes. Dr. B's August 28th Patient Status Report reflected the diagnosis of CTS, stated that claimant is being treated for a work-related injury, and is placed on limited duty wearing splints and doing only sedentary work.

Ms. T testified that she is a corporate officer, the office manager, and claimant's supervisor, and that from her office, she cannot see claimant work and does not closely monitor her. She indicated that claimant did about 90% of the employer's data entry work and estimated that about 50% of claimant's work time, or three hours per day, was spent performing data entry. In discussing the amount of data entry work claimant performed, she pointed out that some of the entries on forms "defaulted" from information previously entered, thus reducing the amount of actual typing. An analysis of claimant's job prepared by Ms. T reflects that the job requires use of the computer "50% frequently" and "50% continuously," as well as the "frequent" use of the printer, switchboard/telephone, and writing utensils.

The November 19th report of Dr. S states the diagnosis as right CTS, improved; that she had reached maximum medical improvement (MMI) on that date since she had adequate treatment and refused surgery; and that her impairment rating is two percent.

The February 5, 1999, report of Dr. H, a designated doctor, states that claimant has not reached MMI and has decided to undergo carpal tunnel surgery on her right wrist.

In addition to the dispositive conclusions, the carrier challenges findings that claimant's job duties included repetitive use of a keyboard and telephone; that her job duties caused her to develop bilateral CTS; and that she was unable to "obtain or [sic] retain" employment at wages equivalent to her preinjury wages due to the claimed injury from August 20th through the date of the hearing.

Claimant had the burden to prove that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Claimant's testimony and the medical records sufficiently support the challenged findings and conclusions.

The decision and order of the hearing officer are affirmed.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge