APPEAL NO. 990742

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On March 11, 1999, a contested case hearing (CCH) was held. With regard to the only issue before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational (repetitive trauma injury) disease of bilateral carpal tunnel syndrome (BCTS).

Appellant (carrier) appeals, contending that a preponderance of the evidence does not support the hearing officer's decision and that claimant's BCTS was due to "other activities." Carrier points out that there were discrepancies in claimant's testimony and that the hearing officer failed to give appropriate weight to its medical expert. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. Claimant responds, urging affirmance.

DECISION

Affirmed.

Claimant was employed as a registered nurse case manager for a home health agency (employer). It is undisputed that claimant sustained a compensable cervical injury (not the injury at issue here) on (prior date of injury), packing and moving some boxes. At some point in time, claimant began to develop numbness and tingling in her hands and arms but claimant testified that she attributed those symptoms to her neck injury. On _____, an EMG was performed and claimant was diagnosed with BCTS. Notice and date of injury are not at issue.

Claimant testified in some detail what her job entailed, that she had to drive at least 18,000 miles a year to justify a company car; that she drove twice that amount; and that she would prepare 20-plus pages of writing on each file she handled, some in handwriting in the car on a clipboard and others on her laptop computer. There was substantial testimony about exactly how much of her driving was work related, how much was coming and going from work, how many hours a day claimant drove, and how many hours claimant spent working on her computer. The hearing officer, in his Statement of the Evidence, comments that claimant testified that she drove "4 to 6 hours per day and 8 to 10 hours per week of computer work. There was no evidence to the contrary."

Dr. C was a referral doctor who diagnosed moderate BCTS based on an EMG on _____. Dr. W is claimant's treating doctor and on an Initial Medical Report (TWCC-61) dated September 30, 1997, stated that claimant "developed [BCTS] from repetitive overuse of hands involving data entry, writing, driving." In a Specific and Subsequent Medical Report (TWCC-64) dated January 31, 1998, Dr. W commented:

> This carpal tunnel syndrome [CTS] was caused by her repetitive overuse of her hands doing data entry on her computer. She also states she had a habit

> of driving with her hands in hyperflexion on the steering wheel for a period of 8 years. When she drove like this her hands tended to become numb with data entry and even writing with her pencil. The patient thought that the numbness in her hands may have been related to the herniated disk in her neck, causing her cervical [illegible] however, nerve conduction studies by [Dr. C] showed that the numbness in her hands was due to [BCTS] when he did EMG [illegible] and nerve conduction testing.

In another report dated March 25, 1998, Dr. W stated:

> This patient was working as a field case manager. Her job included daily driving of up to 4-6 hours a day, as well as word processing on a computer for 2-4 hours a day. The patient was employed in this position for seven years. Median nerve injury can occur with repetitive overuse of hands along with improper positioning of hands when using equipment . . . . The patient writes approximately 4-6 hours a day. This was repetitive overuse of her right hand. She frequently wrote continuously without any rest periods. This also contributed to her [CTS] and ulnar nerve syndrome of her right hand. She frequently did not take any rest periods and she used improper positioning because the computers at work area not positioned correctly ergonomically. For these reasons, I feel that the patient's [CTS] and ulnar nerve syndrome are directly related to repetitive strain injuries and overuse injuries that were directly related to her job as a case manager.

Dr. EC, a neurologist, in a report dated December 4, 1998, stated:

> Her job included daily driving for up to six hours and a lot of computer work, very repetitious hand type work. The patient was employed for 6-7 years. She developed symptoms while at work secondary to repetitive overuse of hands, along with improper ergonomics and equipment use. The patient has been subjected to repetitious and chronic traumatic vibration to her hands. It is my impression that this patient's [CTS] and ulnar nerve syndrome are occupationally related and, to the best of medical probability, relate to her employment, as I stated before.

Claimant was examined on behalf of the carrier by Dr. E whose letterhead indicates that he is an internal medicine specialist. In a report dated November 3, 1997, Dr. E expresses the opinion that claimant's BCTS is not related to the compensable (prior date of injury) cervical injury. In an April 2, 1998, report, Dr. E repeats that the EMG findings were "surreptitious findings while searching for evidence of cervical radiculopathy" and were not related to the (prior date of injury) injury. In another report dated November 4, 1998, Dr. E states:

> I still stand by my opinion of November 3, 1997, suggesting that EMG/NCV studies showing evidence of [BCTS] and bilateral ulnar neuropathy were surreptitious findings, and not injury related. This claimant's primary injury occurred when she did repetitive lifting of boxes for a short period of time, associated with physically moving the office. This should not have been sufficient to cause chronic [BCTS] with ulnar neuropathy. [Dr. CO] opinion appears to focus on the fact that the claimant has untreated [BCTS] and as stated in his report, he feels maximum medical improvement will not be reached until her [CTS] treatment is authorized.

Carrier cross-examined the claimant in some detail pointing out discrepancies between claimant's testimony, a recorded transcribed statement and the various histories recited by the doctors. In its appeal, carrier contends that the hearing officer's decision is against the great weight and preponderance of the evidence, that there was "evidence of numerous non-work related activities" and that the "medical evidence . . . does not support" the hearing officer's decision of work-related BCTS. Carrier argues that claimant has the "burden to show by reasonable medical probability that the Claimant's work activities were a cause of her alleged injury." First, we note that claimant has presented medical evidence of causation through the reports of Dr. W and Dr. EC, which would support the hearing officer's decision. Secondly, we have held that a claimant's lay testimony, if believed by the fact finder, can support a determination of a CTS injury. *See* Texas Workers' Compensation Commission Appeal No. 94070, decided February 24, 1994, and cases cited therein and Texas Workers' Compensation Commission Appeal No. 94746, decided July 18, 1994.

Otherwise, carrier refers to "significant discrepancies" in claimant's testimony and states that the hearing officer did not discuss these discrepancies and give them "the appropriate weight when evaluating the Claimant's testimony as a whole." Basically, carrier asks us to weigh the evidence and substitute our opinion for that of the hearing officer. We have many times held that the 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. In this case, we do not so find.

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

Philip F. O'Neill
Appeals Judge