APPEAL NO. 990857

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 23, 1999, a contested case hearing (CCH) was held. At issue was whether the respondent (claimant) sustained a compensable injury in the form of an occupational disease, carpal tunnel syndrome (CTS), on _____, and whether she had disability as a result of that injury. There was no dispute over the claimant's diagnosis, or that it necessitated surgery; rather, the appellant (carrier) argued that essentially all of the claimant's medical evidence could not be considered as it did not live up to the "requirements" of Merrell Dow Pharmaceuticals, Inc. v. Havner, 953 S.W.2d 706 (Tex. 1997) (Havner or Havner case).

The hearing officer held that the claimant sustained compensable CTS in the course and scope of employment. She noted that the Havner case did not preclude a hearing officer from considering medical and testimonial evidence of the nature presented in this case, because expert evidence was not necessarily required to prove causation in workers' compensation cases. She further found that the claimant had disability from her injury for the period from May 4, 1998, through the date of the CCH.

The carrier has filed a brief in which it extensively attacks the proposition that CTS is occupationally related to the job that the claimant held at the time of her injury. The carrier urges that Havner stands for the proposition that an expert's "bare opinion" will not suffice.

DECISION

Affirmed.

The claimant worked as a cashier for (employer), starting in August 1997. She said that the employer had a quota requiring 500 items to be scanned in an hour. The job description for her position states that items shall be scanned quickly and accurately. Meeting and exceeding the quota would be grounds for raises and promotion. The claimant said that around January 1998, she began having problems with pain and numbness in her hands, and concluded that the holiday rush had something to do with this, and that it would go away. The claimant, at that time, reported her problems and asked to be transferred to a "lighter" register. The claimant said she transferred back in April and again began having hand problems.

Of further note is that, beginning in January 1998, from 7:30 a.m. to 2:30 p.m., the claimant worked in a school cafeteria, a job that continued for six weeks until her doctor advised her to quit. She said that she worked at the employer after this shift and throughout the weekend, working at least 30 to 35 hours a week, which was considered full time.

To greatly summarize the evidence, there are opinions from various doctors in the record with whom she consulted, including Dr. L, a neurologist, that her CTS was secondary to her work as a cashier. The claimant said she was tested for both thyroid

disorders and diabetes in 1998 and in January 1999, and that her testing was normal. The claimant had surgery on October 29, 1998, and had not returned to work at the time of the CCH. She said that some, but not all, of her problems were alleviated with surgery. She said that the reason she went through a battery of tests for other conditions in January 1999 was that she was not healing as expected.

Dr. F testified on behalf of the carrier. Dr. F described his medical education and his training as a hand specialist. When Dr. F was also asked questions about his interpretation of the Havner case, and whether the claimant's medical opinions connecting her CTS to her work would bear up under his interpretation of that case objection was made, and Dr. F was also identified as "an attorney." However, there was no counterpart development of his legal education or legal practice experience, nor was he tendered as a legal expert. Dr. F talked about various articles he had read that questioned the relationship of CTS to occupational causes, and identified other factors, such as diabetes, obesity, gender, and hypothyroidism, with which CTS was also associated. Dr. F said that, while he was persuaded that vibrating tools and twisting of the wrist at work on a repetitive basis could give rise to occupational CTS, he essentially disagreed that there were other causes, or that keyboard work was linked. He agreed that there was an opposing viewpoint in the medical literature which in fact supported the concept that CTS arose from various repetitive activities, but that he did not agree with this position. Dr. F identified some, but not all, of the articles the carrier put into evidence as reflective of the position he endorsed. Dr. F also opined that the amount of time that the claimant was off from work following her surgery was unreasonably long and could not be accounted for medically. Dr. F agreed he had no knowledge of her medical status after her November 3, 1998, examination by him; at that examination, she told him she felt better after her surgery.

It is important to emphasize that the CCH process and standards of evidence are devised in the 1989 Act to get at the heart of the factual issues governing payment of income and medical benefits in a more expedient, summary fashion than might be permitted in a full-blown trial in a district court. Removing procedural delay was an intended reform of the 1989 Act. To that end, summary procedures may be used, and witness statements or summaries that might not be admissible in court are expressly allowed at the CCH. Section 410.163. Conformity to the legal rules of evidence is not necessary. Section 410.165(a). A hearing officer shall accept all written reports signed by a health care provider. Section 410.165(b). The statutory scheme governing workers' compensation administrative agency hearings alone would render Havner evidentiary requirements not strictly applicable to the CCH process. Likewise, as observed by the hearing officer, expert evidence is not required to prove causation in cases of CTS. We note that the Havner decision itself does not require the finder of fact to refrain from considering the totality of evidence offered (not just expert evidence). See Havner, page 719. While we believe that it is a considerable oversimplification of the Havner case to state that it precludes consideration of an expert's "bare opinion," we find nothing in this toxic tort case to override the hearings scheme envisioned by the legislature in the 1989 Act. *See also* Texas Workers' Compensation Commission Appeal No. 990003, decided February 19, 1999; Texas Workers' Compensation Commission Appeal No. 981594, decided August 26, 1998. The doctor's opinions in medical reports expressly allowed in CCHs often represent the summary of the doctor's practical experience as well as his

knowledge of learned treatises. There is no need in an Initial Medical Report (TWCC-61), Notice of Medical Payment Dispute (TWCC-62), or Report of Medical Evaluation (TWCC-69) to recite treatises for the opinions stated therein to be given credence by the hearing officer. We will not conclude that the claimant's doctor's opinions are not based, in part, upon the medical literature in favor of occupational causes of CTS, the existence of which was affirmed and conceded by Dr. F, whether or not he personally agreed.

Finally, because the essence of the carrier's appeal is a call for eliminating CTS as a compensable injury, we would note that, given that repetitious trauma is specifically defined as an occupational disease in Section 401.011(34), the elimination of one type of repetitive motion disease as an injury is a matter for the legislature to evaluate (as they did in enacting new standards for compensability of heart attacks). We will not eliminate CTS as a compensable injury in the context of appellate review of a single case.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza. We simply cannot agree that there is "no" evidence supporting the decision of the hearing officer. To the extent that some of the articles put in evidence by the carrier indicate that individual physiology is a factor in development of CTS, we would repeat what we have stated before: that the employer takes the employee as he finds him with respect to preexisting physical condition, gender, size, and weight. A claim for compensability of physical damage is not defeated because coworkers exposed to the same activity do not also suffer the same injury. Each claim is decided on the evidence presented. The hearing officer's decision and order are sufficiently supported by her role as the finder of fact, by the 1989 Act, and by the record in this case. We therefore affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge