APPEAL NO. 990985

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 16, 1999. He made the following findings of fact and conclusion of law:

FINDINGS OF FACT

2. On _____, the Claimant [respondent] was working on a production line for the Employer.

3. The Claimant was lifting pieces of metal weighing approximately nine pounds each.

4. While performing the above work related activities the Claimant strained her left shoulder and or neck.

5. The Claimant was furthering the affairs or business of her Employer at the time of the injury.

CONCLUSION OF LAW

1. The Claimant sustained a compensable injury on _____.

The appellant (carrier) requested review, stated that the claimant had a bone spur long before the _____ claimed injury, contended that the decision of the hearing officer is not supported by any competent evidence and is against the overwhelming weight of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer. The claimant responded, requesting that the hearing officer's decision be affirmed.

DECISION

We reform the Decision and Order of the hearing officer by adding a decision consistent with his findings of fact and conclusion of law and affirm the added decision and the order of the hearing officer.

The claimant testified that she worked for the employer, a manufacturer of air conditioning units, for about 262 years; that she worked in the sheet metal section; that her job includes taking metal parts off a conveyor and placing them on a pallet; that on _____, she had been doing that job for two or three days that week; that her shift started at midnight; that at about 4:00 a.m. she had a catch in her shoulder as she lifted a piece of sheet metal weighing about nine pounds, flipped it over, and placed in on a pallet; that she completed the shift at 7:00 a.m.; that she thought that it would go away, but that it became worse over the weekend; that the pain started running down her shoulder to her thumb and index finger; that over the weekend she put ice on it and took extra strength Advil; that she

returned to work on Monday; that she made an appointment to see the company doctor, Dr. S, and saw him at work on Wednesday; and that Dr. S said that there was nothing wrong with her, but that she knew he was wrong because she was still hurting. She said that she went to Dr. KC on December 18, 1998; that Dr. KC told her that she had a bone spur in her neck that was causing the pain; that she did not miss work because of the neck problem; that she had surgery on her hand to remove a ganglion cyst; and that she missed work because of the surgery.

A report of an injury investigation dated December 8, 1998, states that the claimant reported soreness and numbness in her left shoulder, arm, thumb, and index finger; that the injury occurred at 4:00 a.m. on _____; that the injury started to bother the claimant over the weekend; that the claimant has filed an accident report before concerning repetitious injuries to her right arm, back, neck, and both hands; that the claimant is required to handle sheet metal parts; and that in the opinion of the persons completing the report, the injury was caused by repetition on the job.

A report from Dr. S dated December 9, 1998, states that there was no apparent injury. A progress note of Dr. KC indicates that he saw the claimant on December 21, 1998; that she has another workers' compensation claim; that Dr. CA is treating her for arthralgia and pain in her right hand with trigger fingers with osteoarthritis components; that on _____, the claimant complained of pain and an aching sensation in her left lateral deltoid area; that the pain has persisted and progressed; that the claimant said that over the last week she had numbness or tingling in the left thumb and radial aspect of the index finger as well as pain extending to the trapezius to the base of the cervical spine; that she appears to have symptoms compatible with a left C5-6 cervical nerve root compression; that it started while she was working, so she assumes that it was job related; however, there is not a specific incident that she relates of excessive strain on her job that was a specific instigating injury; that he cannot determine the source of the injury; and that the etiology remains unclear. In a progress note dated January 18, 1999, Dr. KC states that the claimant is scheduled to have hand surgery on January 22, 1999; that his impression is A [l]eft shoulder sprain, component of cervical radiculopathy"; that he suggested daily physical therapy (PT) for two weeks; and that the PT would have to be coincidental to her hand surgery to be performed by Dr. CA. A PT initial evaluation and plan of care dated January 20, 1999, includes the history of the claimant's condition; says that the assessment is cervical sprain and cervical radiculitis; and states that the claimant will be seen three times a week with initial traction and modalities to relieve inflammation and pain and progression toward cervical and upper thoracic stabilization.

The burden is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony,

and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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). An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). In Texas Workers' Compensation Commission Appeal No. 92242, decided July 24, 1992, the Appeals Panel cited Texas Supreme Court and courts of appeal decisions and stated that an employer accepts an employee as she is, that a preexisting condition or infirmity can be aggravated by an injury, that liability arising through aggravation cannot be defeated by showing that the employee was not a well person at the time of the injury, and that a predisposing bodily infirmity will not preclude compensation. In Texas Workers' Compensation Commission Appeal No. 952184, decided February 7, 1996, the Appeals Panel agreed that the claimant had arthritis and degenerative disc disease; noted that the claimant's condition was not limited to arthritis and degenerative disease; cited Appeal No. 92242, *supra*, and stated that the aggravation of a preexisting condition by a work-related injury, including a repetitive trauma injury, is compensable; and affirmed a determination that the claimant sustained an injury in the course and scope of employment. On numerous occasions, the Appeals Panel has stated that it can affirm the decision of the hearing officer on any theory reasonably supported by the evidence. In the case before us, the report of the employer, the records of Dr. KC, and the PT records indicate that repetitive trauma caused the claimant's condition. The hearing officer does not find that the claimant's bone spur was caused by the work of the claimant on _____. His findings of fact and conclusion of law are not 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The Decision and Order of the hearing officer does not contain a decision and contains an order that the carrier is ordered to pay benefits in accordance with the decision, the 1989 Act, and the Texas Workers' Compensation Commission rules. Although the lack of a decision is not appealed, we modify the Decision and Order of the hearing officer to include a decision that the claimant sustained a compensable strain injury to her left shoulder and neck on _____. We affirm that added decision and the order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge