

APPEAL NO. 991245

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 20, 1999. He (hearing officer) determined that the respondent's (claimant) bilateral carpal tunnel syndrome (BCTS) was the result of her compensable injury of _____. The appellant (carrier) appeals this determination, contending that it is contrary to the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a private duty licensed vocational nurse. She testified that on _____, she was helping to lift a patient from a chair. When the helper let go, the patient's weight shifted to the claimant. She said she felt head and neck pain and had swelling, numbness, tingling, pain, and cramps in both arms. She said these problems with her arms were at first intermittent, but have generally continued and increased since the date of injury. Although she claimed back injuries in connection with this incident, the only issue before the hearing officer was whether the incident caused BCTS.

Medical reports reflect arm pain or numbness and tingling in both arms and apparently there was some confusion over whether the arm condition was caused by pain radiating from the neck or from the wrists. In a report of April 9, 1996, Dr. A noted that ulnar, median, and radial nerve function was normal bilaterally. An EMG and nerve conduction test on January 31, 1996, was read as normal with no evidence of nerve root compression, neuropathy, or myopathy. In March 1996, Dr. K became claimant's treating doctor. In a report of April 15, 1996, he wrote that the claimant "describes a constant numbness in her arms. . . ." On June 1, 1996, he wrote somewhat inconsistently that she was having discomfort in her arms "for the last month." In any case, an EMG on June 10, 1998, disclosed BCTS. Dr. K testified that he initially thought the claimant's pain was coming from the neck, but after the June 10, 1998, EMG, he diagnosed BCTS based on this EMG and her other symptoms. He did not find this inconsistent with the prior normal EMG because, in his opinion, a negative EMG does not "absolutely" rule out neuropathy. He also discounted other possible causes for the positive EMG such as thyroid disease, pregnancy, and diabetes. He concluded that the incident as reported by the claimant was the cause of her BCTS and explained what he believed was the mechanism involved. He admitted that he did not do a Phalen's or Tinel's test in arriving at this diagnosis, but conceded that those tests are common diagnostic tools for this condition.

The carrier did not dispute that the claimant has BCTS or that the lifting incident occurred. It offered the opinion of Dr. C that "[b]ased on the mechanism of injury, it would have been impossible to contract [BCTS]" and that, if the incident caused the BCTS, it would have been reflected in the first EMG. The carrier also challenges Dr. K's credibility

and persuasiveness for, among other reasons, his failure to recall that he allegedly told the benefit review officer that he could not state that the claimant's BCTS was related to the lifting incident. The carrier also points to the failure of the medical records to reflect complaints of arm numbness "soon after the injury date." The claimant, in turn, challenged the credibility of Dr. C largely because he performed only a records review and did not personally examine the claimant.

The claimant had the burden to prove that the lifting incident at work caused her BCTS. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether it did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. This case devolved into a battle of the experts with Dr. C stating categorically that the lifting incident could not have caused the BCTS. Dr. K thought otherwise and testified to the contrary. The hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). He evaluated the thoroughness of these opinions and found Dr. K more credible and persuasive. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the opinion of Dr. K, deemed credible by the hearing officer, sufficient to support his findings that the claimant's BCTS was compensable.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Dorian E. Ramirez
Appeals Judge