APPEAL NO. 991283

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case is back before us after our remand in Texas Workers' Compensation Commission Appeal No. 990401, decided April 14, 1999. We had remanded the case for the hearing officer to analyze the question of whether the respondent (claimant herein) suffered an injury in light of the doctrine of aggravation and to make additional findings. A contested case hearing (CCH) on remand was held on May 6, 1999. After the CCH on remand the hearing officer issued a new decision finding that the claimant had aggravated a preexisting condition sustaining a new injury in the form of an occupational disease--carpal tunnel syndrome (CTS)--while performing job duties for her employer. The hearing officer concluded that the claimant sustained a compensable injury on Compensable injury, and had disability from April 4, 1998, through the date of the original CCH held on January 27, 1999. The appellant (carrier herein) files a request for review arguing that the claimant failed to prove that she suffered a compensable injury and, consequently, the hearing officer erred in finding disability. The claimant responds that the carrier's arguments concerning what constitutes an injury by aggravation are incorrect and argues that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

No additional evidence was taken at the CCH on remand. The hearing officer took official notice of the record from the original CCH held on January 27, 1999. Thus we adopt the following summary of evidence from our earlier decision in Texas Workers' Compensation Commission Appeal No. 990401, *supra*:

> The claimant testified that she began working for the employer in 1985 assembling picture frames, a job which required the repetitive use of her hands. It was undisputed that the claimant sustained an injury to her left wrist and had CTS surgery in 1996. The claimant testified that she returned to work for the employer in 1997. The claimant testified that she initially had some soreness in her left hand after returning to work, but that this gradually went away. The claimant testified that when she returned to work after the Christmas holidays in January 1998 there was a lot of work and she was required to work very fast. The claimant testified that she started to have problems with her left hand and returned to Dr. W, the surgeon who had performed the 1996 CTS surgery. Dr. W eventually diagnosed the claimant with recurrent CTS and the claimant took the position that as a result of this condition she has had disability since Compensable injury.

Dr. W testified by phone at the CCH. Dr. W testified that a person can be cured of CTS but that it can reoccur. Dr. W testified that in his opinion this is what had happened in the claimant's case. Dr. W also explained the use of the 1995 injury date in his initial medical reports in 1998. It was Dr. W's opinion that the claimant had suffered a new injury as a result of the repetitive use of her hands after returning to work.

The carrier argued that the claimant did not sustain a new injury but was suffering from a continuation of her prior injury. The claimant put into evidence a statement from a person in the claimant's personnel department who stated that the claimant complained of problems with the hands after returning to work in 1997. The carrier also submitted a medical report from Dr. D, who it represented examined the claimant by agreement of the parties. Dr. D stated in a report dated August 10, 1998, as follows:

I do feel that the problem is related to her original problem in December of 1995 and therefore she is going to have to come to terms with the fact there are some types of work activity that she is not able to tolerate.

The carrier states its request for review that the record could have been clearer in regard to the status of Dr. D, who it asserts is a doctor who was chosen by the Texas Workers' Compensation Commission to resolve the medical dispute in the case. The carrier also asserts in its request for review that the claimant saw Dr. D by the agreement of the parties. The carrier insists that Dr. D was not a doctor selected by the carrier. We concede the record is less than clear on how the claimant came to see Dr. D.

The hearing officer's decision on remand includes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On compensable injury, Claimant aggravated a pre-existing condition sustaining a new injury in the form of an occupational disease ([CTS]), while performing her job duties for Employer.

2. Due to the claimed injury, Claimant was unable to obtain and retain employment at wages equivalent to Claimant's pre-injury wages beginning on 4-4-98, through the original [CCH] was (sic) held on 1-27-99.

CONCLUSIONS OF LAW

3, The Claimant sustained a compensable injury in the form of an occupational disease ([CTS]) on compensable injury.

4. The Claimant had disability from 4-4-98, through the date of the original hearing held on 1-27-99.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

We find sufficient evidence in the testimony of the claimant and of Dr. W to support the hearing officer's finding of injury. The carrier questions whether Dr. W's testimony constituted evidence that the claimant suffered an aggravation of her preexisting CTS. We certainly think that his testimony can be reasonably interpreted to support this proposition. We recognize that Dr. D expressed a contrary opinion, but do find that his opinion constitutes the overwhelming weight of the evidence. The carrier also argues that the claimant's lay testimony is insufficient as a matter of law to prove CTS. We have specifically held that a claimant is generally not required to prove the relationship between work and CTS with medical evidence. Texas Workers' Compensation Commission Appeal No. 962516, decided January 22, 1997, and cases cited therein. Nor is scientific evidence required to prove an injury by aggravation. Texas Workers' Compensation Commission Appeal No. 971521, decided September 18, 1997. The carrier seeks to draw a distinction between "symptomatic" aggravation and an aggravation that constitutes a compensable injury. As pointed out in Appeal No. 990401, *supra*, it is well-established that the aggravation of a preexisting condition is itself a compensable injury.

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Susan M. Kelley
Appeals Judge