APPEAL NO. 991339

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 26, 1999. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease and that she did not have disability within the meaning of the 1989 Act. In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In addition, the claimant asserts error in an evidentiary ruling. In its response, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The claimant testified that she has been a bus driver for the self-insured for approximately six and one-half years. She stated that she drives a bus eight to 13 hours per day, five to six days per week and that her duties require her to use her hands to grasp the steering wheel, to maneuver the bus, to adjust the mirrors, and to open the door. She testified that her hands and wrists are constantly bent so she can grasp the steering wheel, that she has to exert substantial pressure on the wheel to steer the bus, and that she also performs repetitive activities with her hands when she makes the frequent turns required to complete her bus routes. The claimant testified that on December 30, 1998, she noticed that she had numbness and tingling in her hands. On January 5, 1999, she first sought medical treatment with Dr. L. On January 15, 1999, the claimant underwent electromyelogram and nerve conduction studies. On January 26, 1999, Dr. L discussed the results of that testing with the claimant. She stated that she first realized that her condition was work related at that appointment because Dr. L so advised her. In progress notes of the January 26th appointment, Dr. L diagnoses moderate bilateral carpal tunnel syndrome (CTS). In those notes, Dr. L also states that the claimant "[f]eels that the steering wheel is putting too much pressure on her wrists and I agree that this may be work related."

In a letter of February 11, 1999, Dr. L stated "[i]t is my professional opinion that her symptoms are, in fact, work related. It was for those reasons that I put her on restricted duty." Dr. L referred the claimant to Dr. B, a hand surgeon, because the claimant's symptoms did not improve with conservative treatment. In a letter of February 16, 1999, Dr. B states:

> Given the patient's state of good health and her current hand complaint and clinical findings compatible with bilateral [CTS] (bilaterally positive Phalen and reverse Phalen signs) and with electromyographic nerve conduction studies confirming this diagnosis, it is my medical opinion, as well as that of [Dr. L], that her hand complaints are directly related to repetitive use from her hands in her work related duties as a [bus driver].

On April 7, 1999, the ombudsman assisting the claimant sent a letter to Dr. B in which she described the claimant's duties as driving a bus "8-13 hours per day, 5 days per week for almost 7 years." In addition, the ombudsman stated that her job duties "involve constantly turning the bus steering wheel with her hands/wrists placed in the same position constantly." Dr. B responded, as follows:

> It is known that repetitive, stressful activity is the #1 cause of CTS and therefore this is frequently linked to occupational duties. Your letter clearly references such activities performed by [claimant] as a . . . bus driver (repetitive, stressful grasping, i.e. a steering wheel).

The claimant has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before her. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. The testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain a compensable repetitive trauma, occupational disease injury. A review of the hearing officer's decision demonstrates that she simply was not persuaded that the claimant presented sufficient evidence to demonstrate the causal connection between her CTS and her work activities as a bus driver. The hearing officer specifically noted that "there was scant evidence of repetitive motions" and that the claimant "did not establish that her driving and turning were sufficiently repetitive to cause the onset of [CTS]." In addition, the hearing officer noted that the claimant's "medical evidence was not credible as it was based on limited patient history regarding Claimant's work activities." The hearing officer was acting within her province as the fact finder in deciding to reject both the claimant's testimony and the causation opinions of Drs. L and B. Our review of the record does not reveal that the hearing officer's determination that the claimant did not sustain a repetitive trauma, occupational disease injury in the course and scope of her employment as a bus driver is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co.,15 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to reverse that determination on appeal.

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the hearing officer's determination that the claimant did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

The claimant asserts that the hearing officer erred in excluding three articles concerning CTS and its causes. The hearing officer excluded those documents because the claimant did not timely exchange them with the self-insured. The claimant did not dispute that she had not timely exchanged those articles. The hearing officer noted that the claimant could, and should, have obtained the articles sooner and thus, did not find good cause for the failure to timely exchange the articles. We find no abuse of discretion in the hearing officer's having so found. Nonetheless, we further note that in order to obtain a reversal for the exclusion of evidence, the claimant must demonstrate that the evidence was actually erroneously excluded and that "the error was reasonably calculated to cause and probably did cause rendition of an improper judgment." Hernandez v. Hernandez, 611 S.W.2d 732, 737 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been held that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). In this instance, any error in the exclusion of the claimant's exhibit simply does not rise to the level of reversible error. The hearing officer was not persuaded by the claimant's testimony that she engaged in sufficient repetitively, traumatic activities at work to cause bilateral CTS. As a result, we cannot agree that the exclusion of a general article about CTS and its potential causes was reasonably calculated to, and probably did, cause the rendition of an improper judgment. Accordingly, any evidentiary error was harmless and would not provide a basis for reversing the decision and order on appeal.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

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Tommy W. Lueders
Appeals Judge