APPEAL NO. 991449

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 8, 1999. The issues at the CCH involved whether the appellant, who is the claimant, sustained a compensable injury in the form of an occupational disease on _____, the scope of this injury, and whether she had disability as a result of this injury.

The hearing officer found that the claimant did not sustain injury, including any cervical injury or carpal tunnel syndrome (CTS), and that she therefore had no disability as defined by Section 401.011(16).

The claimant has appealed. She argues the facts that she believes support her contention that she was injured through a repetitive trauma injury. The respondent (carrier) responds that the case involved resolution of facts which are the purview of the hearing officer and should not be reversed absent a great weight and preponderance to the contrary, which does not exist here.

DECISION

Affirmed.

The claimant was employed as a collector for (employer), and had been employed by them since September 2, 1998. She was responsible for contacting delinquent customers in order to make payment arrangements on their accounts. She also attempted to locate missing debtors (skip tracing). The claimant said that while she worked four hours on Saturdays, she worked nine-hour days.

The claimant identified several forms that would be manually filled out by her "quite often" every day. She stated that this would mean an hour to an hour and one-half a day. In addition, there were some forms that required typing, to the extent of 20-25 keystrokes per account. She asserted that this consumed six hours of her day.

A letter from Mr. F, collections manager, said that persons in claimant's position were scheduled for 44 hours a week. He said that when he was approached by claimant about seeing a doctor on January 23rd, she reported hand and wrist problems, and when he pointed out that typing was minimal at their job, the claimant opined that a problem with her neck from an automobile accident might be causing the problem.

The claimant said that around Christmastime 1998, she began feeling tiredness in her arms, which she dismissed at the time. However, in January, she had tingling, numbness, and burning feelings in her upper arms which got worse. Claimant went to her regular doctor, Dr. S, on January 28th, but changed the next day to Dr. R, D.C., because he took workers' compensation patients and Dr. S had diagnosed her with bilateral CTS and cervical strain. Nerve conduction testing showed CTS in her right hand and borderline

results in her left. She said she had an MRI of her neck and arm. A report from Dr. R noted that this was normal. Claimant was taken off work on January 29th and said she had not been released back to work since. She said that she was currently seeing another doctor, Dr. D, who was keeping her off work and concluded that her condition was work related. He was being paid through her private insurance because the carrier had denied her claim.

The claimant said she had been involved in two prior motor vehicle accidents (MVA). In 1993 she broke her ankles and fractured her collarbone. In November 1995 she had whiplash. Claimant also had two prior workers' compensation injuries. In July 1997 she fell down and sustained a low back injury while pregnant. Earlier, in January 1995, while employed by another employer, claimant claimed bilateral CTS and ulnar nerve injuries. Claimant denied having any problems with her hands between October 1995 (when she received an impairment rating (IR)) and January 1999. Her October 1995 IR assessment (which assigned one percent) noted that her CTS was resolved.

On cross-examination claimant said she worked for the employer for three weeks before being promoted into the position she contended caused injury. She was demoted on January 28th for a high rate of delinquent accounts at her store. Claimant said she had "mentioned" her CTS problem prior to her demotion. The claimant said she believed a cervical injury occurred from sitting in one position for so long.

Claimant said that her day was as follows: for two hours in the morning, she would call debtors. During the middle four hours of the day, she did skip tracing, and then calls were made the rest of the day. Skip tracing also involved making telephone calls. Apparently (and it was not made completely clear by the claimant as to the extent of input involved), the information that was yielded would be input into the computer. She said that she made a minimum of 125 telephone calls a day. Claimant said she had an automatic dialer system but that it was not working at one point "around January," the exact date unknown.

Ms. I was a senior collector for the employer and supervised the claimant's work. As she described the work day, the first two hours devoted to making telephone calls involved minimal keyboarding. The four hours devoted each day to skip tracing involved more in the way of review than data input. While the computer was used to look up data, Ms. I said that this involved scrolling and using up and down arrow keys along with the sift key. Ms. I testified about 30-day progressive discipline and counseling used to encourage claimant to bring her numbers up. Ms. I said that the day before claimant was moved, she leaned back in her chair and raised her arm and said that it hurt. Ms. I said she would not characterize the move as a demotion, although her area had more responsibility.

Ms. I said that on the last day the claimant worked for the employer, she pulled Ms. I aside and told her she was having problems with her wrists and didn't know what the cause was. Ms. I said she referred to her MVA in which she said she had injured her neck, and that she speculated that this could be a possible cause of her hand problems.

The collections operations manager, Mr. M, also described the job claimant had and said that the most typing would be when telephone logs were entered as text to update information yielded in telephone calls. He said that the claimant wore a headset to make her calls. Mr. M said that claimant did not have a cut in pay when she was moved.

Dr. S's notes of her initial visit record that she started having problems on January 11th. Dr. R filed an Initial Medical Report (TWCC-61) concluding that CTS arose from her job duties and that she could return to limited work on April 3, 1999. He responded to questions from the Texas Workers' Compensation Commission with his opinion that her current CTS was an exacerbation of her preexisting condition. The record also included examples of the type of forms that were filled out and the computer logs that were input. Job descriptions were also admitted for consideration by the hearing officer.

Section 401.011(36) defines repetitive trauma injury as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." To recover for an occupational disease of this type, one must not only prove that repetitious, physically traumatic activities occurred on the job, but also must prove that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally. Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). 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). 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.). 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

From the record here, the hearing officer evidently drew the conclusion that any computer work or manual filling out of forms that the claimant did was neither sufficiently repetitious nor of such duration as to cause the problems she had, as opposed to the effects of earlier injuries. We do not find that this inference is against the great weight and preponderance of the evidence.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the hearing officer's decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge