APPEAL NO. 991522

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 29, 1999. She (hearing officer) determined that the appellant (claimant) did not sustain bilateral carpal tunnel syndrome (CTS) in the course and scope of her employment with the employer and that since she did not sustain a compensable injury, she did not have disability. The claimant appealed, stated why she thought that the evidence established that she sustained a compensable injury, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that she was injured in the course and scope of her employment. The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant testified that she had problems with her hands before she started working for the employer, that her hands would go numb, that she would go to the doctor, that x-rays would be taken, and that she was told she had inflammation and was given medication. She was questioned about medical records of Dr. ES, agreed that she went to Dr. ES in January 1983 because she thought she had arthritis because her joints were painful and swollen, said that she took medication as needed and that it helped, and agreed that in April 1988 she went to Dr. ES because of pain in her hands and numbness in the tip of a finger and that an August 1994 entry says her hands are still painful and get numb. The claimant testified that she began working for the employer as a cook on February 5, 1998; that she was in training the first week, but that she did the work of a cook while in training; that for about an hour a day she used a large food chopper to chop food; that she had to use both hands to pull down the old-fashioned chopper used by the employer; that she used an old-fashioned can opener with a handle on it to open large cans of vegetables served in the cafeteria; that she used the can opener about one minute every two hours; that on March 1, 1998, she was very busy, did a lot of work, and went home tired; that she woke up at about midnight with painful, swollen hands; and that the next day she told her supervisor what had happened and went to Dr. ES. She said that she was referred to Dr. Y, that tests were performed, that she was referred to Dr. R, that Dr. R performed surgery on her right hand, that Dr. R told her she should wait about three months to have surgery performed on the other hand, that she was not happy with the treatment of Dr. R, and that she went to Dr. BS.

A medical record of Dr. ES dated March 2, 1998, indicates that the claimant had numbness of the right arm and that her right arm swelled, and a record dated March 5, 1998, indicates that Dr. ES diagnosed CTS and referred the claimant to Dr. Y. The records for those dates do not contain comments concerning cause for the claimant's condition. In a letter to Dr. ES dated March 23, 1998, Dr. Y stated that neurological examination was

completely normal, that he suspected arthritis, that CTS was a secondary consideration to be ruled out, that the claimant had worked for the employer for only three weeks, and that her condition was not related to her work for the employer. In a letter dated April 15, 1998, Dr. Y said that he performed a nerve conduction study, that the claimant had an abnormal nerve conduction study consistent with right CTS, and that she was being referred to Dr. R. Dr. R performed a right carpal tunnel release on April 29, 1998. In a follow-up note dated December 21, 1998, Dr. BS wrote "[h]er carpometacaral joint arthrosis certainly seems work-related from her injury in March when she was doing everything as a cook. This has simply continued to progress and demonstrate itself radiographically since." At the request of the carrier, Dr. F reviewed the claimant's medical records. In a letter dated January 21, 1999, Dr. F stated that he disagreed with Dr. BS and that in his opinion the claimant's CTS is not work related.

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 testimony of the claimant alone may be sufficient to satisfy the burden of proof. Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 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). While a claimant's testimony alone may be sufficient to prove a claim, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. 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). The hearing officer's determination that the claimant was not injured in the course and scope of her employment while working for the employer is 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).

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). Disability, by definition, depends upon there being a compensable injury. *Id*. Since we have found the evidence to be sufficient to support the determination that the claimant did not sustain a compensable injury, the claimant cannot have disability.

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Dorian E. Ramirez
Appeals Judge