APPEAL NO. 991633

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 6, 1999, a contested case hearing (CCH) was held. The issues disputed at the CCH were whether the respondent, who is the claimant, sustained an occupational disease in the course and scope of her employment, and the date of such injury.

The hearing officer held that the claimant sustained a left lateral epicondylitis/ tendinitis which was related to her work, and that she knew or should have known of her disease on _____.

The appellant (self-insured) has appealed, arguing that there was insufficient evidence to establish sufficient repetitious activities in the course of work to link any condition to the claimant's duties. The self-insured argues that it is erroneous to consider medical evidence on causation if the recitation of what occurs at work comes from the history given by a patient. The claimant responds that there is no threshold of repetitious activity that is required to trigger an injury, and that variables amongst workers may dictate how quickly injury develops. The claimant points out the lack of evidence supporting the self-insured's arguments.

DECISION

We find sufficient evidence to support the decision of the hearing officer on the appealed points.

Claimant had been employed by the self-insured for over 30 years. At the time of her asserted injury, she worked in verification of employee information. She said that she was required to field at least 50 phone calls a day because her number was listed as the general contact for such information. Claimant testified (and offered pictures to show) that as she was on the telephone, she used her left hand to key in social security numbers and names to pull up the pertinent file. She also would do entry, and maintain hard copy paper files, often at the same time that she was on the telephone. The claimant said maintenance of the file included filing into it paper documents, using a two-hole paper punch and stroking downward to punch holes in the documents to be filed. Pictures showed that the keyboard was nearly on her lap, and it was hard for her to pull her legs completely under her workstation.

The claimant said that she also pulled files two or three times a day, lifting boxes already full of files. Pictures in the file room showed that the files were stacked from foot level to above the claimant's head. She said that in the summer of 1998, she began to have left arm pain. In October she went to see a doctor, Dr. C, who referred her elsewhere because he did not treat her condition. She said that her primary doctor, Dr. O, referred her to Dr. F, whom she first saw on _____. She discussed her duties with Dr. F and he opined that she had a work-related condition.

Claimant had not lost any time as a result of her injury. It appears that the issue to be resolved at the CCH had largely to do with whether the self-insured was going to provide medical treatment. She said she had only had pain medication and a brace prescribed to date.

The medical records in evidence show that on October 28, 1998, Dr. C wrote a letter to Dr. O stating his belief that the claimant had an entrapment neuropathy involving cubital tunnel and radial tunnel syndromes. He said that a referral should be made as this was outside his usual practice. Dr. C's report does not opine about causation, noting only that claimant denied any specific trauma. On _____, Dr. F wrote to Dr. O that claimant had a "tennis elbow" or epicondylitis. Dr. F reviewed the pictures of her workstation and said it appeared her problems were related to her work.

Statements given by coworkers who worked in the same area were presented; Ms. W stated that claimant had to engage in repetitive reaching and stretching, due to a poorly designed workstation. She stated that extensive computer and telephone use was involved. Other statements are to the same effect. The pictures in evidence show a somewhat cramped area and corroborate the statements. An ergonomic evaluation done on December 10, 1998, resulted in the claimant's sliding drawer keyboard area being removed, as sufficient leg room was not provided, and repositioning of the keyboard, mouse, and monitor.

Claimant said she had never had a workers' compensation claim before. The job with the self-insured had been her only job. Both Dr. C and Dr. F answered written interrogatories by noting that claimant's type of injury could be caused by repetitious lifting or tasks such as the claimant described. Although Dr. C's notes indicated that claimant's arm would hurt when she did water aerobics, no questions were elicited about this activity.

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. Employer's Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). We cannot agree that performance of office work such as the claimant described is beyond the common experience of a trier of fact such that medical evidence is required to establish a link.

The self-insured's argument that the reliance by a doctor only on history is insufficient to form an opinion is novel, but we find no merit in this assertion. Given that a

physician will seldom be able to use personal observation of circumstances leading to an injury, it would appear that history will play an important part in opinions on causation. It is not history per se that may cause an expert's opinion to receive less weight, but whether the history upon which the opinion reflects the facts leading up to injury. There was no showing that the claimant's work history was anything other than she testified, and the assessment of claimant as a credible witness was a matter for the hearing officer to weigh. 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 of 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.). 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). We do not agree that there was not sufficient evidence to support the hearing officer's decision and order, and we affirm them.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge