APPEAL NO. 991794

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 July 29, 1999. With respect to the issues before him, 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 its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that if the claimant sustained a compensable occupational disease injury, the date of injury is _____. The claimant testified that she began working as a warehouse clerk for the employer on or about March 17, 1999. She stated that her job duties included building boxes and cones, using an air-powered staple gun and processing orders, which required her to enter data into a computer to generate shipping labels and bills of lading. The claimant estimated that she spent about one hour each day building boxes and cones; that she had to fold and staple cardboard to make the cones and the boxes; that she put four to five staples in a box and five staples in a cone; that the staple gun weighed between 20 and 30 pounds; and that there was a "pop" when the staple went into place. She testified that she spent the remaining seven hours of work processing orders on a continuous basis. She stated that in order to process an order, she had to enter the name of the client company, its address, and the method of shipment. Thereafter, the claimant printed the labels and affixed them to the boxes and repeated the process on the next shipment. The claimant stated that in late March 1999 she began to develop numbness and tingling in the hands and that she reported her injury to Mr. J, her supervisor, on _____.

Mr. J testified that the claimant only built boxes on three or four days of her employment with the employer and denied that she built them every day. He stated that the claimant did not continuously process the orders and estimated that the claimant only spent about four hours each day entering the information from the orders to the computer to generate labels and bills of lading. He stated that the rest of the day the claimant spent sitting at her desk waiting for work. Finally, Mr. J testified that the claimant reported her injury to him on _____, after he had advised her that if her performance did not improve her employment would be terminated. The claimant denied receiving a performance warning before she reported her injury. The claimant's employment with the employer was terminated on April 14, 1999.

The carrier also introduced an affidavit from Mr. T, the lead man in the warehouse. Mr. T stated that the claimant was required to do minimal data entry in her job and that it was not continuous, but rather was scattered throughout the day. In addition, Mr. T stated

that as much as 75% of the day the claimant did not have any work to do and that her position was going to be terminated if she was "unwilling or unable to do other duties." Mr. T also maintained that the claimant did not report her injury until after Mr. J gave her a performance warning. The carrier also introduced an affidavit from Mr. D, whose workstation was next to the claimant's in the warehouse. Mr. D also stated that the claimant was only required to do occasional data entry that was not continuous, that "a lot of the workday, [claimant] did not have any work to do and only sat at her workstation." Finally, Mr. D stated that he only observed the claimant making boxes on the last day and a half that she worked for the employer.

The claimant sought medical treatment on April 13, 1999, from Dr. H, a chiropractor. Dr. H diagnosed bilateral carpal tunnel syndrome (CTS). In a "To Whom it May Concern" letter of June 1, 1999, Dr. H stated:

> Based on my examination and the NCV study performed, [claimant's] carpal tunnel is a direct result of her job. The repetitive nature of her job attributed [sic] to the carpal tunnel symptoms [claimant] has been experiencing such as pain, numbness, tingling, and cramping.

On July 16, 1999, Dr. C, a chiropractor, examined the claimant at the request of the carrier. Dr. C opined that the claimant had not yet reached maximum medical improvement and stated that "[a]fter examination, I find that [claimant] demonstrates objective and subjective complaints of bilateral [CTS] due to the Workers' Compensation injury of Subsequent injury."

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 him. 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 he simply was not persuaded that the claimant presented sufficient evidence to demonstrate the causal connection between her CTS and her work activities. That is, the hearing officer did not believe that the claimant performed

sufficient repetitively traumatic activities at work to cause her CTS. The hearing officer was acting within his province as the fact finder in deciding to reject both the claimant's testimony and the causation opinions of Drs. H and C. 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 is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

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 hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge