

## APPEAL NO. 991848

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 16, 1999, a contested case hearing was held. With regard to the only issue before him, the hearing officer determined that appellant (claimant) had not sustained a compensable occupational disease, bilateral carpal tunnel syndrome (CTS), on \_\_\_\_\_.

Claimant appeals, contending that the hearing officer erred in finding no repetitive injury and that the medical evidence had not established a causal relationship between claimant's employment and her bilateral CTS injury. Claimant cites several examples of why she believes the hearing officer reached the wrong conclusion. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent (carrier) responds, urging affirmance.

### DECISION

Affirmed.

The hearing officer's Statement of the Evidence contains a detailed recitation of the testimony and will not be repeated here. Claimant was employed by a (employer) for about 10 years, first doing preclosings, then as a closer and subsequently as an escrow officer. In all of those positions, claimant did considerable computer work, typing, "flipping through files" and handling multiple documents. It is undisputed that claimant repetitively used her hands, frequently worked overtime and that the business was stressful with "no down time." Claimant testified that she had had numbness and tingling in her hands for four or five years, was told by a doctor in 1993 that she had CTS but that she did not follow up with the doctor because she did not want surgery and elected instead to use a wrist brace. Claimant testified that towards the end of 1998 her left hand condition became worse and that she sought medical care. (The date of injury pursuant to Section 408.007 is not an issue and the parties have accepted \_\_\_\_\_, as the date of injury.) Claimant testified in detail as to her job duties, the kind of pain she was experiencing and some of her hobbies, which included tournament bass fishing and needlepoint. Claimant did testify that the fishing would consist of fishing eight hours a day on a weekend, casting and "cranking" with her right hand.

Claimant saw Dr. G on \_\_\_\_\_, and, in a report of that date, Dr. G recited claimant's history, noted positive Tinel's signs and diagnosed left CTS. On the patient history sheet that claimant completed, she did not fill out questions pertaining to where and on what date the accident occurred and how long she had worked at the job if the injury was work related. (We recite this inconsequential fact only because the hearing officer apparently gave it considerable weight.) Carrier denied liability of claimant's claim in a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated April 26, 1999. In a note dated May 3, 1999, Dr. G recommended surgery on the left wrist and commented:

I have reviewed again with [claimant] that I think this does relate to her activities. Obviously with the work restrictions we had in place back in January one would think that that would be enough of an indication that it is related to work, but evidently this was not for purposes of this being processed as a work-related claim. [Claimant] has no other contributing factors whatsoever and at her age and activity with her hands I think this is as clear a case of a work-related [CTS] as one could find. Hopefully this will prove to be sufficient for the carrier.

Testing performed by Dr. J on May 3, 1999, indicated bilateral CTS "left slightly worse than right." In a follow-up report dated May 10, 1999, Dr. G wrote:

Evidently the paperwork involved for moving forward with her Worker's comp status needs to be clarified. In [claimant's] case, I think her activities clearly play, in all likelihood, an exclusively causative role. Although she is active with her hands outside of work, the activities within her job description at work are obviously associated with a high incidence of [CTS] and if not causative, as noted before, are contributing to the aggravation of her condition. The bottom line is this is unquestionably by standard is work related.

In an undated signed statement, received by carrier around April 20, 1999, claimant wrote:

[Dr. G] initially asked if we had filed it on Workman's Comp. as he felt this was work related, however, I didn't want to file on workman's comp because our Company has always provided us with a physically comfortable work environment, i.e., ergonomic chairs, keyboard (if requested), etc.. I also believe this condition is aggravated by things outside work, as I have several hobbies that involve hand work. In addition, this condition does seem to run in my family, as my paternal grandmother had to have both wrists done, by father and mother have also had to have surgery on one wrist with the other one possible in the future.

Claimant apparently had surgery in July 1999, using her group health coverage.

Claimant asserts that the hearing officer denied her compensation "for no expressed reason" and that the hearing officer's recitation of the evidence is "rambling," "frequently inaccurate" and that the hearing officer based his decision on minor inconsequential matters. Specifically, claimant cites the hearing officer's reliance on the questions left blank on Dr. G's intake form, arguing that claimant had spoken with Dr. G many times and that Dr. G was well aware of her history; the hearing officer's comment that claimant was somewhat contradictory during her testimony; and that Dr. G ignored other contributing factors outside claimant's work. Claimant cited the inaccuracy of that statement, pointing to Dr. G's May 3 and 10, 1999, notes quoted above. Claimant also takes issue with the fact that the hearing officer found it "truly anomalous" that claimant paid for Dr. G's final visit and surgery with her group health policy, pointing out that carrier "has consistently denied"

claimant's workers' compensation claim, and that for claimant to get treatment, she has no alternative but use her group health benefits. Claimant also cites as inaccurate the hearing officer's statement that claimant "said [Dr. G] indicated her smoking may cause her condition but was not the primary cause." We agree with claimant that our review of the record does not indicate that to be the claimant's testimony.

We have frequently noted that Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. 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 (Tex. Civ. App.-Amarillo 1974, no writ). 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). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). While we may agree with many of the points raised by claimant, and a different fact finder may well have reached a different conclusion from the same evidence, that does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). We further note the ambiguities in claimant's undated statement, quoted above, where even the claimant stated that her condition was "aggravated by things outside work," naming her hobbies and familial history. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion regarding the facts for that of the hearing officer.

Accordingly, the hearing officer's decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge