APPEAL NO. 992020

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 August 10, 1999. He (the hearing officer) determined that the appellant's (claimant) work-related conduct was not traumatic or repetitious; that she was not exposed to repetitious trauma to a greater degree at work than to which the general public is exposed in ordinary life; that due to the claimed injury, the claimant has been unable to earn wages equivalent to her preinjury wage beginning on April 12, 1999, and continuing through the date of the hearing; that the claimant did not sustain a compensable injury in the form of an occupational disease on _____ (since the claimant claimed a repetitive trauma injury, should have been with a date of injury of _____); and that since the claimant did not sustain a compensable injury, she did not have disability. The claimant appealed, urged that the decision of the hearing officer is against the great weight and preponderance of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that she sustained a compensable injury and had disability. 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 Decision and Order of the hearing officer contains a statement of the evidence. Briefly, the claimant testified that her job as an insurance underwriter assistant required that she take information from clients over the telephone and record information on forms by hand, that she spent about 60% of her eight-hour day writing on forms, and that some of the other time she used a computer to find files. She was shown a form, stated that some questions required marking an answer to that question, that some required handwritten answers, and that sometimes it took about 20 minutes to complete a form and sometimes it took over an hour depending on how much she had to write. She said that for the first time on _____, she felt pain in her right upper extremity. She said that the handwriting caused her injury. In an Initial Medical Report dated May 25, 1999, Dr. L stated that the claimant reported that she sustained a work-related injury on _____; that she performed mild labor-type work; and that his diagnosis was triangular cartilage injury and neuroma of the radial branch nerve.

The claimant's supervisor testified that she worked for the employer for nine years and that for five years she did the same work that the claimant did. She said that underwriter assistants obtain applications that are sent in, call the applicants to verify the information on the application, and record some information on the application. She said that the application in evidence contains an average amount of writing on the form. Another supervisor testified that the amount of writing that has to be done varies, that

sometimes just blocks need to be marked, and that sometimes a person may have to write a half of a page.

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 an injury, 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. 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. It was for the hearing officer, as the trier of fact, to resolve inconsistencies and conflicts in the evidence. In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could 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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations related to injury in the course and scope of employment are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support those determinations of the hearing officer, we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

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.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge