APPEAL NO. 000237

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 January 12, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____ (all dates are 1999 unless otherwise noted), in the form of a repetitive trauma occupational disease which has been diagnosed as carpal tunnel syndrome (CTS) in the right wrist and that the claimant has had disability from January 20th through February 28th; two unidentified days between March 1st and May 19th; and from May 19th to January 12, 2000.

Appellant (carrier) appeals, contending that the type of work claimant did "would not have caused" the CTS, that claimant's "activities were the same as the general public is exposed to outside of employment," that other workers doing the same job have not been injured and that with no compensable injury, claimant did not have disability. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

Claimant was employed as an "Imaging Tech" by the employer. Claimant's job basically was to feed (and sometimes count) 50-page batches of documents through a scanner and then input an eight-digit number into a key pad with her right hand. Claimant testified that she normally did 100 to 200 batches a day, that she usually worked from 7:00 a.m. to 3:00 p.m. five days a week, that she got a 15-minute break in the morning and the afternoon with 30 minutes for lunch. It appears undisputed that the workload was unusually heavy in December 1998, and claimant testified that she was working 50 to 60 hours a week that month. We note that there was extensive testimony on how claimant performed her job, that there was reference to a photograph of a scanner like the one claimant used (not in evidence), that claimant demonstrated how she performed her duties using a page from a typical batch, and how she counts using "sticky stuff" on her fingers.

Claimant testified that she began having pain in her elbow down to her wrist sometime in early _____ and that she sought medical attention with Dr. K on January 20th. An Initial Medical Report (TWCC-61) of the January 20th visit notes complaints of right shoulder and neck pain which "hurts down to hand." Longhand notes appear to indicate claimant has had this pain since _____ which is the date of injury that Dr. K lists. Dr. K diagnosed CTS (along with a neck diagnosis). According to claimant, and not at all clear, Dr. K referred claimant to another doctor for a nerve conduction study which was apparently performed in March and then Dr. K referred claimant to Dr. B, a surgeon, who removed a ganglion cyst on claimant's right hand on May 19th and then subsequently performed a right CTS release on July 23rd. Dr. B notes that claimant had "a difficult

history," is "a poor historian and a smoker" and has "a history of non-compliance." Dr. B states that some of claimant's complaints "seem to be consistent with CTS and she did have a supportive NCV." Claimant testified that since neither Dr. K nor Dr. B handled workers' compensation cases, she changed treating doctors to Dr. H and began seeing him on August 31st. Dr. H prescribed physical therapy and parafin baths. Claimant testified that she did not experience much improvement from the surgery but has experienced improvement under Dr. H's care. In a report dated September 1st, Dr. H states:

> The patient works keying in numbers and scanning images. She performs this task approximately 50 hours per week and has done this for almost 12 months. The job is very repetitive in nature and she started to have pain in her right upper extremity on _____. She was diagnosed with [CTS] on 1-21-99 by her primary care doctor. She was referred to a surgeon in February 1999. Electro-diagnostic nerve testing performed in [sic] March 8th was positive for right [CTS]. She attempted to return to work from March 1st through May 17th. Surgery was performed May 19th to remove a ganglion cyst on the dorsal aspect of her right wrist. Carpal tunnel release surgery was performed July 23rd. Patient has been off work since May 19th and has not had any post-surgical therapy.

Dr. H took claimant off work on August 31st.

Regarding disability, claimant testified that Dr. K had her off work from January 20th through February 28th, that she returned to work on March 1st on light duty and worked until May 19th when she had the ganglion cyst surgery. Claimant said that she was off work for one or two days between February 28th and May 19th but she could not identify the specific dates. Claimant testified that she has been unable to work since May 19th.

The hearing officer, in his discussion, notes that claimant "described in detail her work and was working extra hours approximately one month earlier," that carrier asserts claimant "did not do enough work of a repetitive nature to cause [CTS]," but that claimant had clarified her position and was "persuasive on both issues [of injury and disability]." We would add that the hearing officer also had the benefit of viewing a photograph of the scanner, observing claimant's demonstrations of how she fed the documents into the scanner and was able to observe the surgical scars on claimant's hand and wrist.

Carrier, in its appeal, points to certain references in the transcript to show how light claimant's work was, how the employer's representative "confirmed that the claimant's work was not traumatic" and basically asks us to substitute our judgment for that of the hearing officer, who had the benefit of seeing certain demonstrations. Carrier contends that claimant's job essentially was "the same as the general public is exposed to outside of employment." We disagree with that premise in that the general public does not in the course of normal activities process up to 10,000 documents in a seven to ten-hour day through a scanner. However light and nontraumatic each document may be, and that it

"did not involve jerking, pushing or pulling," does not persuade us to substitute our opinion for that of the hearing officer regarding the sheer volume of documents processed.

An occupational disease is "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. . . . The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). A repetitive trauma injury is "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." Section 401.011(36). An employee must prove, by a preponderance of the evidence, the compensability of an occupational disease. Texas Workers' Compensation Commission Appeal No. 960582, decided May 2, 1996, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). "[O]ne must not only prove that recurring, physically traumatic activities occurred on the job, but must also prove that a causal link exists between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared to employment generally." Texas Workers' Compensation Commission Appeal No. 950868, decided July 13, 1995, citing Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). Our review of the evidence concludes that the hearing officer's decision on injury was not so against the great weight and preponderance of the evidence as to be manifestly wrong or clearly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We would also note 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).

Carrier contends that no one else has been injured performing the scanning job. First, we will note that that is not the standard to determine compensability and second, only one other person does scanning on a full-time basis. While the employer's representative said she has done scanning, she agreed that she did not do it on a full-time basis but only occasionally to help out. Further, the employer's representative's lay opinion that scanning would not have caused the CTS, was a fact for the hearing officer to consider and we decline to disturb his decision based on that subjective opinion.

Carrier argues that there was no disability because claimant continued to work (at light duty) until the ganglion cyst surgery on May 19th, that the ganglion cyst was not work related (although the doctors may have thought it was a cause of claimant's discomfort) and that there is no medical evidence to support disability. We have frequently noted that disability may be proven by a claimant's testimony alone, if believed, as the hearing officer clearly did in this case. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. Although the medical evidence of disability between January 20th and February 28th is sketchy, the record reflects that Dr. H took claimant off work after August 31st. We hold the evidence is sufficient to support the hearing officer's decision on disability.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are 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). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge