APPEAL NO. 000254

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 10, 2000. The issues at the CCH were whether the appellant (claimant) sustained a repetitive trauma injury in the form of an occupational disease; what is the date of injury; whether the respondent (carrier) is relieved of liability pursuant to Section 409.002 because of the claimant's failure to timely notify the employer of her injury pursuant to Section 409.001; and whether the claimant had disability and, if so, for what period. The hearing officer determined that the claimant did not sustain a repetitive trauma injury in the form of an occupational disease while working for the employer; that the date of the alleged injury is _____; that the claimant reported the alleged injury in a timely manner and the carrier is not relieved of liability pursuant to Section 409.002; and that, because the claimant did not sustain a compensable injury, she did not have disability. The claimant appealed the determinations that she did not sustain a repetitive trauma injury in the course and scope of her employment and did not have disability. The other determinations have not been appealed and have become final under the provisions of Section 410.169. In her appeal, the claimant contended that her work with the employer was repetitive, was physically traumatic, and caused her injury; urged that she was not able to work because of the injury to her arms and hands; 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 appeal file does not contain a response from the carrier.

DECISION

We affirm.

In her appeal, the claimant makes statements that include information that is not in the record. Only the record, and not the information in those statements that is not in the record, will be considered in rendering this decision. Section 410.203(a)(1).

In response to questions from the ombudsman, the claimant testified that in November 1997 she began working for a temporary service performing work on an assembly line for the employer. The hearing officer began questioning the claimant, and his questioning of the claimant continues for 31 pages of the transcript. The claimant said that in February 1998 she became an employee of the employer. She stated that the employer made curved vent pipes for clothes dryers, that collars had to be riveted on the pipes, that clamps and stickers had to be placed on the pipes, and that the assembled pipes had to be placed in packages. She testified that from four to 10 persons worked on the assembly line; that during a day, everyone worked at every station; that the quota was 500 pipes per person; and that everybody's arms and hands hurt from doing the work. She described an activity of putting a part on a pipe and said that she rested it on her stomach, pulled it apart, placed a collar on it, pulled to lock the collar in place, turned it over, and did the same thing on the other side. The claimant stated that at some time she became a supervisor and supervised the persons working on an assembly line; that she was a

working supervisor, but did not work as hard as she did before she became a supervisor; and that each person on the assembly line would get behind, she helped them, and she performed each of the jobs on the assembly line. She said that her hands and arms hurt like everybody else's; that she also had numbness in them; that she quit working for the employer on May 18, 1999, for reasons not related to her injury; that she thought that her arms and hands would get better after she stopped working, but they did not; that she went to Dr. H, a chiropractor, on _____; and that he told her that she had carpal tunnel syndrome (CTS) and a ganglion cyst that were caused by her repetitive work and prescribed therapy. She said that on July 18, 1999, a temporary agency got her a job with another employer; that Dr. H told her that she should have let her arms and hands heal more before she started working again; and that Dr. H took her off work on September 30, 1999.

The hearing officer told the ombudsman to ask any questions he had. In response to questions by the ombudsman, the claimant said that she had not had any previous CTS; that she last worked on September 30, 1999; and that she reported the injury to the employer on June 25, 1999. She also testified that after she became a supervisor, she still worked on the assembly line because her supervisor thought that the workers worked better and faster if she was working on the assembly line, that the experienced workers had to pick up the slack of the new workers, that she worked eight hours a day, and how she helped with each task on the assembly line. On cross-examination, the claimant was asked about entries in the records of Dr. H. She said that she was asked about a date of accident; that she said that it was not a specific accident, like cutting yourself; that she told the doctor or his assistant that over the last year she worked on the assembly line; and that everybody's arms hurt. The claimant again stated that she did everything on the line.

The claimant had admitted into evidence 46 pages of medical records from Dr. H and the carrier had admitted into evidence 47 pages of medical records from Dr. H. Neither party took the time to place the records in chronological order or to point out what it considered important in the records. The Appeals Panel has previously criticized such activity or inactivity. Notes dated _____, state that the claimant had wrist pain and hand numbness and that the claimant missed work last August and never reported it. A report dated June 25, 1999, states that the claimant received treatment for CTS without adverse reaction. Records from Dr. H dated in June, July, and August 1999 indicate that the claimant was also treated for lumbar, thoracic, cervical, and hip problems. In a letter dated August 26, 1999, Dr. H said that the claimant presented herself for an initial examination and evaluation of symptoms arising from a work-related injury; that the claimant is an assembly worker and noticed tingling in her hands that gradually became worse; that currently her most dominant symptom is sharp aching and tingling pain in both forearms, radiating into both hands; that the diagnosis was CTS; and that the treatment would include therapy and myofascial release to free any bound nerves in the forearm. In a letter dated September 29, 1999, Dr. H said that, in his opinion, the injuries the claimant sustained are in fact work related and that the repetitive stress and strain of the assembly process produced both the cumulative trauma disorder, CTS, and the ganglion cyst located on the dorsum of her right wrist. In a note dated September 30, 1999, Dr. H stated that he recommended that the claimant be excused from work until symptoms in the arm improve.

The carrier had admitted into evidence a two-page document entitled "Job Title: Line Supervisor." Under job description it contains "[s]upervise all floor personnel of your assigned areas and oversee production operation. Reports to Shift Supervisor or Plant Superintendent." It includes duties related to manufacturing seven parts or groups of parts. Generally, it states that the line supervisor must know all steps in the manufacturing process, be able to check the product to see if it is good, use measuring devices, perform tests to see if products meet specifications, train employees, supervise employees, keep scrap as low as possible, and produce a quality product.

In the statement of the evidence in his Decision and Order, the hearing officer wrote:

> The evidence indicates that the Claimant performed repetitive work on an assembly line, for a period of time. Subsequently, the Claimant accepted a supervisory position. The evidence presented by the Claimant is insufficient to establish the nature, extent, and duration of her duties. The evidence is insufficient to establish that the Claimant was exposed to "repetitious physically traumatic activities" in the workplace. Finally, the evidence is insufficient to establish that the Claimant's bilateral [CTS] and right ganglion cyst were caused or aggravated by her work related activities.

The hearing officer set forth stipulations concerning jurisdiction and venue in Finding of Fact No. 1 and also made the following findings of fact related to the conclusion of law that the claimant did not sustain an occupational disease, repetitive trauma injury, while working for the employer:

FINDINGS OF FACT

2. Between November 1997 and May 18, 1999, the Claimant worked for the Employer, performing some repetitive activities with her upper extremities.

3. The Claimant was not exposed to repetitious physically traumatic activities in her workplace.

4. The evidence is insufficient to establish that the Claimant's work related activities, prior to May 18, 1999, caused or aggravated her bilateral [CTS] or right ganglion cyst.

5. The Claimant resigned her position, in lieu of termination, on or about May 18, 1999.

6. The Claimant did not seek any medical treatment until _____.

The burden is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. 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). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the 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. 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). 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." The Appeals Panel has stated that a claim of repetitive trauma injury should be supported by evidence of the extent and nature of the work performed and some description of the extent and nature of the work performed. Texas Workers' Compensation Commission Appeal No. 92272, decided August 6, 1992. The claimant was afforded the opportunity to present evidence on those matters. The hearing officer did not find the claimant's testimony to be persuasive. The hearing officer is not bound by the testimony of a medical witness when the credibility of that testimony is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Texas Workers' Compensation Commission Appeal No. 952044, decided January 10, 1996. An expert witness's deductions from facts are not binding on the hearing officer even when they are not contradicted by another expert. Texas Workers' Compensation Commission Appeal No. 961610, decided September 30, 1996. An appeals level body is not a fact finder and it 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). That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn the factual determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. The appealed determinations of the hearing officer are not 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the appealed determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge