APPEAL NO. 000260

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 in two sessions on September 30, 1999, and December 7, 1999. The hearing officer held the record open to permit the parties to submit additional medical evidence and the record closed on December 15, 1999. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease and that the claimant had disability as a result of her compensable injury from July 8, 1999, through the date of the hearing, December 7, 1999. In its appeal, the appellant (carrier) argues that those determinations are against the great weight of the evidence. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The claimant testified that she began working as a processor for (employer) on January 28, 1997, and that she continued in that position until April 2, 1999, when she was terminated. On May 1, 1999, she was rehired by the employer as a forklift driver. On _____, the claimant went on a medical leave due to a miscarriage. She returned to work on June 28, 1999, again in the position of a forklift driver. The claimant testified that on _____, she developed swelling in both hands. On July 6, 1999, the claimant reported an injury to her employer and on July 8, 1999, she sought medical treatment with Dr. E, a chiropractor. The claimant stated that in her job as a processor, which she held from January 1997 to April 1999, she works on an assembly line processing plastic products. She explained that her job duties include trimming excess plastic from the products using a knife; wiping grease off the products using a cloth; folding boxes to put the products in; packing; labeling; putting the boxes on pallets; and tying the boxes on the pallets together with string. The claimant testified that her job requires her to perform constant reaching, pushing and pulling motions with her hands. On cross-examination, the claimant acknowledged that she rotated to a different line each day; however, she stated that the types of hand movements she performed were essentially the same, only the size of the products and the weight of the boxes changed.

In his Initial Medical Report (TWCC-61), Dr. E diagnosed bilateral carpal tunnel syndrome (CTS), noting complaints of hand and arm pain and swelling. He stated that the claimant gave a history of the having performed repetitive activities at work, namely lifting, pulling, turning and reaching. In addition, Dr. E noted that the claimant had been driving a forklift "for the last 2 weeks aggravating her condition." Dr. E took the claimant off work at the July 8, 1999, appointment and has not released her to return to work. In a letter dated August 23, 1999, Dr. E noted that the claimant performs a "considerable amount of wrist extension and flexion" at work and opined that the claimant's injury was caused by those

repetitive activities. On September 15, 1999, the claimant underwent EMG testing, which did not confirm the CTS diagnosis. Rather, that testing suggested that the claimant had ulnar nerve entrapment. In a September 28, 1999, report, Dr. E stated that the symptomatology of ulnar nerve entrapment and CTS are similar and that both can be a result of repetitive motion. Dr. E opined "[t]his is what I believe happened in [claimant's] case. Her job required her to repetitively use her wrist, causing ulnar nerve entrapment in the Tunnel of Guyon."

Dr. K, examined the claimant at the request of the carrier. In his report of November 10, 1999, Dr. K stated that the claimant "does not have symptoms of [CTS] or ulnar nerve entrapment. She does not have symptoms of Guyon's canal compression as suggested by her nerve studies." Nonetheless, Dr. K diagnosed "bilateral wrist pain" and opined that the claimant's "symptoms are work-related." The carrier asked Dr. K to consider additional information, including a job description of the forklift driving position and a chronology of the time the claimant was off work in April and June 1999. In a report of the same day, Dr. K stated "it is my opinion that her history and the description of her job and my physical findings are not consistent with a work injury." In a December 13, 1999, letter in response to Dr. K's December 8, 1999, report, Dr. E reaffirmed his opinion that the claimant's injury was caused by the repetitively traumatic activities she performed at work.

The claimant in a workers' compensation case 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 issue presents a question of fact for the hearing officer. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence, decides what weight to give to 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 this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. Generally, injury may be proven by the testimony of the claimant alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, the testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The carrier contends that the hearing officer's injury determination is against the great weight of the evidence. We find no merit in this assertion. The claimant's testimony about the repetitive activities she performed at work and the evidence from Dr. E provide a sufficient evidentiary basis for the hearing officer's determination that the claimant sustained a compensable repetitive trauma injury. The hearing officer was acting within his province as the fact finder in deciding to credit the evidence demonstrating that the

claimant sustained a compensable injury and to reject the contrary evidence. Our review of the record does not demonstrate that the hearing officer's injury determination is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse it on appeal. Cain; Pool.

The carrier's challenge to the hearing officer's disability determination is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the injury determination, we likewise affirm the hearing officer's determination that the claimant had disability from July 8, 1999, through the date of the hearing.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge