APPEAL NO. 000296

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 13, 2000. The hearing officer determined that the appellant (claimant) was not engaged in repetitious traumatic activity at work; that her wrist problems are not causally related to her employment; that the date of injury of the claimed injury is _____; that the claimant reported the claimed injury to her employer in April 1999; that she did not have good cause for not timely reporting the claimed injury to her employer; and that she did not sustain a compensable injury in the form of an occupational disease. The claimant appealed, stating why she disagreed with those determinations. The respondent (carrier) replied, urged that the evidence is sufficient to support the determinations of the hearing officer, and requested that his decision be affirmed.

DECISION

We affirm.

The claimant testified that she began working for the employer as a personnel clerk in January 1998; that her work varied from day to day; that on an average, she used a computer about three hours a day and made handwritten entries on forms about three or four hours a day; that her hands started going numb; that she did not know what caused it; that in _____, she went to a doctor; that the doctor thought that it might be carpal tunnel syndrome (CTS), did not say what caused it, and prescribed a wrist splint and anti-inflammatory medication; that the treatment did not help her; that the doctor referred her to another doctor; that she had an EMG; that on October 27, 1998, Dr. JP told her that she had CTS; and that she was not aware of any activity other than work that could have caused the CTS. The claimant said that in _____, she told her supervisor, Ms. M, that she thought that she had CTS; that at that time, she did not tell Ms. M that work caused the CTS, but she thought that Ms. M understood it; that in October 1998, she again spoke with Ms. M and showed her the statement from the doctor stating that she had CTS and should avoid repetitive work; that after that, when she had problems, Ms. M would let her perform other work; that in December 1998, she spoke with Mr. R, the safety director; that she asked him if she should file a workers' compensation claim; that Mr. R said that he thought that it was too late; that she did not tell Mr. R that her problems may have resulted from working out; that on April 2, 1999, she told Ms. D that she wanted to file a workers' compensation claim; that Ms. D said that she could file a workers' compensation claim, but that they preferred that it be handled "in house"; that on May 11, 1999, surgery was scheduled; that Ms. D told her that it could not be handled "in house" and she should file a workers' compensation claim; and that she has not had the recommended surgery.

In a report dated October 12, 1998, Dr. S said that the claimant had been examined, that an EMG had been performed, and that there was a moderate degree of bilateral CTS and left ulnar nerve entrapment. In a report dated October 27, 1998, Dr. JP diagnosed bilateral CTS, recommended that the claimant continue using splints and Naprosyn, said

that he placed on her restrictions of no repetitive motion, and noted that surgery may be necessary. In a letter dated August 30, 1999, Dr. JP said that the claimant worked as a secretary and did accounting work that required her to either write or use a computer up to four hours per day on a regular basis; that she had no other risk factors or history that would predispose her to upper extremity neuropathy; that he believed that in light of her job responsibilities and the lack of any other obvious risk factors, this was a work-related injury due to accumulative stress; and that she may require surgery in the future. In a letter dated September 1, 1999, Dr. DP said that he first treated the claimant on March 29, 1999, and that it was his opinion that her condition is work related and caused by her extensive computer use.

The carrier introduced transcripts of interviews of several employees of the employer. Ms. D answered that the first time she talked with the claimant about her hands, the claimant really did not know if it was work related; that on May 11, 1999, the claimant told her that it was totally work related; and that earlier than that the claimant may have told her that she thought it was work related. Mr. R said he spoke with the claimant in late 1998, that she talked about her discomfort, that he did not remember her saying that it was work related, and that the claimant told her that she worked out a lot and could have done it while she was working out. Ms. M said that the claimant told her that her hands would go to sleep at night; that she did not tell her that it was work related; that the claimant mentioned lifting weights, but did not know if that caused it; that on October 28, 1999, the claimant gave her a note from her doctor that said no repetitive motion; that she did not know why the claimant gave the note to her, because they do not require a note from employees when they go to a doctor; that Ms. D was the person who told her that the claimant reported a workers' compensation injury; and that the job required very little writing. Mr. C, a senior accountant, stated that the claimant did data entry 30 or 40% of the time.

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). 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. The hearing officer considered the evidence and made determinations not favorable to the claimant. 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). Only were we to conclude, which we do not in this case, that the appealed determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb those determinations. 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:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge