APPEAL NO. 000360

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 5, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on _____, and that since she did not sustain a compensable injury, she did not have disability. The claimant appealed, urged that the determinations of the hearing officer are 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 in her favor. 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 claimant contended that she sustained a work-related repetitive trauma injury to her upper back, neck, shoulders, and arms. The carrier contended that the claimant did not sustain a compensable injury because she did not engage in repetitive trauma that involved either her thoracic or cervical area. The hearing officer's Decision and Order contains a statement of the evidence. Briefly, the claimant testified that she began working for the employer as a customer service representative on May 4, 1994; that she received calls from customers and used a computer to type information; that she worked nine hours on Mondays and eight hours Tuesdays through Fridays; that she averaged about 40 or 50 calls a day; that in _____, she had pain in her upper back, neck, and shoulders; that the pain became worse; that she was treated by several doctors; and that the doctors said that her condition was work related.

In a report dated July 9, 1998, Dr. P stated that the claimant worked in customer service; that she complained of pain in her neck, shoulders, arms, and hands and intermittent numbness and tingling in her hands; and that he believed that her problem was primarily related to an overuse syndrome. Dr. K examined the claimant at the request of the carrier and in a letter dated September 16, 1998, said that the claimant related the onset of symptoms to work on a computer at work and that he estimated that the probability that the claimant's "present complaints are related to repetitive motions stress disorder is, in fact work related, to be approximately 50%." At the request of the carrier, Dr. H a chiropractor, reviewed the claimant's medical records. In a letter dated January 12, 1999, Dr. H opined that the claimant's continual use of her hands and arms, along with forward head posture, decreased blood flow and resulted in the claimant having a repetitive motion/trauma disorder and that it is work related.

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. In Texas Workers' Compensation Commission Appeal No. 92272, decided August 6, 1992, the Appeals Panel stated that in order to recover for a repetitive trauma injury one must not only prove that repetitious, physically traumatic activities occurred on the job, but also must prove that a causal link existed between these activities on the job and the injury. 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). In his statement of the evidence in the Decision and Order, the hearing officer stated that the claimant failed to establish the requisite causal connection between her activities at work and the injury. 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 a different factual determination could have been made based on the same evidence is not a sufficient basis to overturn a factual determination of a hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. The hearing officer's determination that the claimant did not sustain a compensable repetitive trauma injury is 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 that determination of the hearing officer, we will not substitute our judgment 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:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge