APPEAL NOS. 000424
AND 000466

These appeals arise pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 1, 2000, a hearing was held, to consider issues under two dates of injury. The parties were the same in regard to both dates of injury, although the appellant (carrier) represented an employer who was not the employer on the latter date of injury, but who could be affected by the determination relative to that latter date of injury. Appeal No. 000424 considered a decision on one issue and that was whether appellant/cross-respondent's (claimant) compensable injury of _____ (or ____) _____, was a producing cause of "the bilateral forearms (pronator tunnel syndrome) and elbows (cubital tunnel syndrome)." Appeal No. 000466 considered a decision as to whether claimant sustained an occupational disease on _____, and had disability thereafter. The hearing officer in Appeal No. 000424 found that claimant's symptoms in 1999 were a "mere recurrence of . . . the preexisting condition that has not resolved" and concluded that the _____ injury is a producing cause of the bilateral forearms (pronator tunnel syndrome) and elbows (cubital tunnel syndrome). She also determined, in Appeal No. 000466, that claimant did not sustain an occupational disease in 1999 and had no disability. Claimant asserts that her condition worsened in 1999 and she aggravated her preexisting condition, citing Section 406.031(b) of the 1989 Act in saying she was last injuriously exposed to her diseases in 1999 while employed for (self-insured). Carrier asserts that the hearing officer disregarded evidence that claimant's condition changed dramatically after maximum medical improvement (MMI) was found in October 1998, that Dr. S indicates that her symptoms abated "in July 1999" (possibly July 1998) and also argued the "last injurious exposure" standard propounded by claimant. Claimant responded. Self-insured replied that the decision that no occupational disease was sustained should be affirmed.

DECISION

We affirm both decisions in both appeals.

In February 1998, claimant worked for both self-insured and (company), who was insured by carrier. The two employers agreed that each was partially liable for benefits relative to the 1998 injury in regard to the upper extremities. That injury was not clearly diagnosed by the results of studies performed by Dr. S in 1998, but Dr. S stated in July 1998 that tests showed "evidence of" cubital tunnel syndrome. On claimant's last visit to Dr. S on July 29, 1998, Dr. S noted "mild cubital tunnel" and "possible pronator syndrome." When Dr. S provided a Report of Medical Evaluation (TWCC-69) on October 8, 1998, he said that MMI was reached on October 8, 1998, but his narrative indicated that she was at MMI, not because "further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated," but because, as he states, "she is at MMI based on failure to keep her appointments for re-examination." MMI was not an issue at either hearing, but this declaration, and Dr. S's comments in July 1998, do not show that Dr. S

considered claimant's symptoms to have ended although he did believe claimant was not in "as much discomfort as she was before."

Claimant ceased working for the company at the end of April 1998. She began another full-time position with self-insured in August 1998, but was in training for a period until approximately November 1998, when she said, her duties with a computer became more repetitious. Claimant said that she stopped going to Dr. S in July 1998 and began treatment with Dr. Sl in June 1999; there are no medical records, other than the TWCC-69 in October 1998, during the intervening year.

Claimant stated that in February 1999 her discomfort in her left elbow and forearms increased. She said she reported a new claim to her supervisor with a date of _____. When asked what testing Dr. Sl performed, claimant replied that he had done a "vibrometry" examination. Dr. Sl's July 1999 note says that a vibrometry examination was done and claimant had a "very significant Jetzer scale . . . indicative of a pronator tunnel syndrome."

Dr. Sl also said that claimant's cubital tunnel syndrome has been present since Dr. S treated her; he did not say that it had ceased but had recently returned. On August 17, 1999, Dr. Sl referred to claimant having been scheduled at one time to have surgery in July 1999 but that it was cancelled for insurance reasons; his comment continued by saying, "at any rate, this is an intervening injury. . . ." No further explanation as to why he thought it was an intervening injury was given.

Claimant testified that she had surgery in January 2000 that involved a transposition in the left elbow area (cubital tunnel syndrome). Probably because of the recent date, there are no records of that surgery before us.

The carrier sought the opinion of Dr. S. He said on January 4, 2000, that he considered claimant's problem to be related to the _____ injury and he disagreed with an assertion that "this is an aggravation of a previously existing condition," but that assertion also contained the language, "that had not been diagnosed properly."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. The issues in the two cases reviewed presented factual questions for the hearing officer to determine. *See* Texas Workers' Compensation Commission Appeal No. 962272, decided December 18, 1996. The evidence, including medical evidence, was in conflict as to whether claimant's condition was a continuation of the _____ injury or whether a new injury had occurred. With claimant having been treated for essentially the same condition, the hearing officer was sufficiently supported in finding that claimant had a recurrence of symptoms rather than an aggravation which amounted to an injury. While a fact finder could give significant weight to the passage of time since the _____ injury, the increased repetitious work, and the absence of continuing medical care, she was not obligated to do so, especially where the finding as to MMI was made on the basis stated. We note also that the hearing officer made no finding

of fact that claimant's "last injurious exposure" occurred in _____ or at any time after _____; with findings of fact that claimant experienced a "mere recurrence" and did not sustain a repetitive trauma injury, no finding of fact may be implied that a "last injurious exposure" occurred at any particular time. There is no basis to overturn either decision under review because of the assertion on appeal in regard to "last injurious exposure." *See* Texas Workers' Compensation Commission Appeal No. 962425, decided January 10, 1997 (Unpublished).

The evidence sufficiently supports the hearing officer's decision in both appeals, Appeal No. 000424, and Appeal No. 000466; determinations that claimant's _____ compensable injury is a producing cause of claimant's forearm and elbow problems, that claimant did not sustain an occupational disease in 1999, and that claimant did not have disability, are sufficiently supported by the evidence. The decision and order in both appeals, Appeal No. 000424, and Appeal No. 000466, are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge