APPEAL NO. 000683

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 March 13, 2000. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) sustained a compensable repetitive trauma injury, right carpal tunnel syndrome (CTS). In its appeal, the appellant (carrier) argues that the hearing officer's determination is 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 he began working as a long-haul truck driver for (employer) on April 28, 1972. He stated that in early _____, he began to notice loss of feeling in his thumb and the first two fingers of his right hand, along with pain and weakness. The claimant told his primary care physician about the problems and she referred him to Dr. A. Dr. A ordered EMG testing, which revealed right CTS. On May 11, 1999, Dr. A performed right carpal tunnel release surgery on the claimant. The claimant testified that the condition in his thumb and first two fingers has improved since the surgery but that he has lost most of the use of his fourth and fifth digits since the surgery and that his hand hurts constantly. He stated that he returned to work as a truck driver for the employer at full duty on March 3, 2000. The claimant acknowledged that he was diagnosed with diabetes in April 1999; however, he stated that he has largely been able to control it with diet, exercise, and medication. The claimant testified that he believes that he developed right CTS as a result of the repetitive activities he performed as a long-haul truck driver. He stated that he constantly uses his right hand to perform his work activities. He identified the repetitive activities he performed as turning the steering wheel; shifting gears through seven forward gears; and operating switches for lights and windshield wipers. The claimant further explained that the trucks he drove did not have power steering; that it was "pretty hard" to turn the steering wheel; and that it is sometimes very difficult to shift gears. Finally, the claimant insisted that even though he estimated that 95% of his driving was on the highway, he still performed constant activities with his right hand.

On the issue of causation, the claimant's treating doctor, Dr. B, an orthopedic surgeon, stated:

> My understanding is that there is a dispute regarding the cause of the patient's [CTS]. Because of his pre-existing diabetes, this has led to the conclusion that his [CTS] came strictly from the diabetes. I am in complete disagreement with that. The patient did clearly have [CTS] related to his work. In reviewing his preoperative EMG, the patient in my opinion has mild neuropathy related to his diabetes, whereas the median motor and sensory slowing is rather profound. In

> addition, the carpal tunnel release did a very good job in relieving his numbness in digits one, two, and three, as well as his feeling of losing fine motor. He feels that much of that recovered. As you know his chief complaint has been continued problems with digits four and five and that has been of unclear cause. In my professional medical opinion within all reasonable medical probability, the [CTS] is due to his work activities. I understand that diabetes does predispose to carpal tunnel problems as well as other compression neuropathies. However, without a strong pre-existing component diabetic neuropathy I do not feel that the [CTS] is cause [sic] from his diabetes nor do I feel that contention is supportable.

The carrier had Dr. H, an orthopedic surgeon, perform a peer review. Dr. H opined that the "diagnosis of [CTS] was not caused by the claimant's work environment and/or work activities. The [CTS] was caused by his diabetes."

The claimant has the burden to prove by a preponderance of the evidence that he sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before him. Section 410.165. The hearing officer resolves conflicts and inconsistencies in 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 that end, the hearing officer may believe all, part, or none of the testimony of any witness. The testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant sustained a compensable repetitive trauma, occupational disease injury, namely right CTS. A review of the hearing officer=s decision demonstrates that he was persuaded that the claimant presented sufficient evidence to demonstrate the causal connection between his work activities as a long-haul truck driver and his right CTS. The hearing officer was acting within his province as the fact finder in deciding to credit the claimant=s testimony about the repetitive activities he was required to perform and the causation opinion of Dr. B over Dr. H's opinion that the claimant's diabetes caused his CTS. Our review of the record does not reveal that the hearing officer=s determination that the claimant sustained a compensable repetitive trauma, occupational disease injury in the course and scope of his employment is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge