

## APPEAL NO. 001014

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 30, 2000. In response to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on \_\_\_\_\_ (all dates are 1999 unless otherwise noted); that the claimant did not have disability; and that the claimant timely reported the alleged injury to the employer. The claimant appeals, contending that the hearing officer "did not give weight or credibility to his credible testimony"; that he had sustained a repetitive trauma injury; and that he met "his burden of proof by preponderance of the medical evidence." The claimant contends that it was respondent's (carrier) witnesses that were not credible. The hearing officer's finding that the claimant timely reported his alleged injury has not been appealed and the hearing officer's decision on that issue has become final. Section 410.169. The appeal file does not contain a response from the carrier.

### DECISION

Affirmed.

The claimant was employed by (employer) pulling, measuring, and cutting certain fabrics and materials. The claimant testified that his job duties entailed cutting vinyl, leather, and other fabrics with scissors eight and one-half to nine hours a day, five days a week. As may be evident from the appeal, there was a good deal of conflict in the evidence. Other testimony disputed that the claimant's job was repetitious or that he was constantly cutting. Both the claimant and the carrier's witnesses demonstrated what the claimant's duties entailed. The claimant testified that he felt a gradual onset of pain, numbness, and tingling in his hands and that on September 15th, his hands "got cold and blue." The claimant testified that the next day, September 16th, he went to the hospital emergency room (ER) and was told that he had bilateral carpal tunnel syndrome (CTS).

Even what the medical records showed was in dispute. An ER record dated September 14th, in a longhand impression, states that the claimant was complaining of "numbness to legs and hands"; that his "(L) arm feels weak"; that he had "blurred vision," head pain, and spots in front of his eyes; and that he "felt like the room was spinning." A CT scan of the claimant's head was negative. The ER report did have an impression of "bilateral [CTS]" but did not have any history of the claimant's work activities or his hands being blue and cold. The claimant testified that the employer referred him to Dr. D, a hand specialist. Dr. D, in a report dated October 1st, recites the claimant's repetitive hand use and has an impression of left CTS. The claimant said that the employer would not allow him to return to Dr. D. The claimant was subsequently seen at the (the clinic) on October 29th with a history of cutting leather and vinyl, etc. A diagnosis of the following was made:

1) Left wrist pain, rule out internal derangement/rule out strain/rule out left [CTS]; 2) left elbow pain/rule out medial epicondylitis/rule out strain; 3) left hand pain/rule out left [CTS], rule out strain.

The claimant was taken off work and he contends that he has had disability since that date.

Other conflicting testimony from a coworker, GR, and another coworker was to the effect that the claimant had been injured in an accident with an all terrain vehicle that the claimant had been warned about his performance at work, and that the claimant said that he was “going to get some money” from the employer. Each party said their testimony was more credible than testimony to the contrary.

The hearing officer, in her Statement of Evidence, commented:

The Claimant has the burden of proving by preponderance of the evidence that an injury was sustained in the course and scope of employment and has not sustained that burden. Having listened to and observed the Claimant, the testimony was simply not persuasive.

The claimant appeals, contending that the hearing officer failed to give his testimony and medical evidence the weight and credibility it deserved and that “this is not a credibility issue but rather more of a medical issue and the claimant has meet [sic] his burden of proof by preponderance of the medical evidence.” The Appeals Panel will not decide issues of credibility because Section 410.165(a) makes the hearing officer the sole judge of the weight and credibility to be given to the evidence and this is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In regard to the medical evidence, we have also noted many times that a fact finder is not bound by the testimony (or evidence) of a medical witness where the credibility of that testimony (or evidence) is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref’d n.r.e.). In this case, the hearing officer simply was not persuaded by the claimant’s testimony. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

The claimant, for the first time in his appeal, calls our attention to an allegation “that during the course of the [CCH] . . . there was lots of interruptions that could have affected the flow of testimony.” Our review of the audiotape indicates that there was no more interruption than normal in changing tapes and calling witnesses. In any event, the claimant only speculates that it “could have affected the flow” and made no objection to the

hearing officer at the time. Consequently, any objection the claimant may have had was not preserved for appeal.

In that we are affirming the hearing officer's decision that the claimant did not sustain a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are 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). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Susan M. Kelley  
Appeals Judge