APPEAL NO. 001015

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 April 19, 2000. The hearing officer determined that the compensable injury sustained on _____, does not include an injury to the left upper extremity. The appellant (claimant) appeals and argues that she proved her case. The respondent (carrier) responded by arguing facts in support of the decision.

DECISION

Affirmed.

The claimant was employed as a part-time cafeteria worker in a school operated by the (employer). It as undisputed that she sustained an injury to her right hand while lifting a pot full of potatoes on _____. The hearing was held to resolve the claimant's contention that she also injured her left hand, either at the time or through "over use" because of favoring her right hand.

The claimant agreed that she only reported her right hand to her supervisor when the injury was first reported. However, she said that she felt a pop in each hand and some numbness from the first. She also said she told her doctors about the left hand injury but could not recall the names of the specific doctors who were told. The claimant worked 10 days between December 3, 1998, and January 6, 1999, for three and one-half hours a day. She said that she did her regular work and washed pots with one hand. There was testimony presented from coworkers and a supervisor of the claimant that said she did not complain of her left hand and that she continued to do her normal work.

A treatment record dated November 13, 1998, indicates injury to the right wrist but also makes a somewhat indecipherable notation about the left wrist and shoulder. This same medical clinic, over the next few weeks, treated only complaints involving the right extremity. On December 8, 1998, Dr. A noted that the claimant was experiencing pain in her left hand due to performing all her work with her left hand since the previous week. Dr. A's later records refer to overuse syndrome of the left hand. The claimant was reported to have given submaximal effort on strength testing during a functional capacity evaluation on January 23, 1999.

In this case, while the claimant's later medical records document problems with her left hand and wrist, the hearing officer was still faced with determining if this was part of the claimant's right hand strain. The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo

1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole.

An appeals level body is not a fact finder and 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The decision of the hearing officer is sufficiently supported by the evidence and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Alan C. Ernst
Appeals Judge