APPEAL NO. 001111

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 25, 2000. With respect to the issues before him, the hearing officer determined that the respondent's (claimant) compensable injury of _____, includes the left scaphoid fracture and nonunion and that the claimant has disability from September 8, 1999, to the date of the hearing. In its appeal, the appellant (self-insured) argues that those determinations are against the great weight of the evidence. The appeals file does not contain a response to the self-insured's appeal from the claimant.

DECISION

Affirmed.

It is undisputed that on _____, the claimant fell while walking down stairs in the course and scope of his employment as a registered nurse for the self-insured. The claimant testified that he had immediate pain in his shoulder and lacerations on his left hand. He stated that he developed some pain in his left wrist shortly after the fall, but that it was not swollen and he had full range of motion (ROM); therefore, he thought he had just sprained his wrist. He further testified that in October 1998, he began to develop pain in both wrists and hand and believed that he might be developing carpal tunnel syndrome (CTS). On December 7, 1998, the claimant sought treatment from his primary care physician, Dr. D, for the suspected CTS. Dr. D referred the claimant to Dr. M, an orthopaedic surgeon.

At her initial appointment with the claimant, Dr. M took x-rays of his left wrist, which revealed a left scaphoid fracture and nonunion. Thus, the critical question in this case is whether the left scaphoid fracture and nonunion were caused by the compensable injury of _____. The hearing officer properly noted that the resolution of that issue required medical evidence of causation. Dr. M addressed the issue of causation in an April 17, 2000, "To Whom it May Concern" letter. Specifically, Dr. M stated:

> [Claimant] initially by his report injured his wrist in 1993 after an episode in the parking garage at the facility where he was employed when he was pushed down the stairs and by his description fell backwards landing on his outstretched left wrist and right elbow with the wrist in a hyperextended position. This mechanism is certainly consistent with the mechanism that can cause a fracture of the scaphoid. Often times patients feel that their wrist is only bruised in these injuries and after mild swelling and soreness resolves usually after several weeks, the patient is able to continue on with their activities not realizing that there is a small fracture of the scaphoid bone. It is not uncommon that this occurs and the patient is not aware of the severity of the injury to the wrist . . . until much later, usually years later, when due to the altered mechanics in the wrist and abnormal wear on the

> carpal bones and cartilage that they start to have degenerative changes or arthritis forming in the wrist. They then become symptomatic with increase in pain and stiffness which is the course that [claimant] experienced.

In the closing paragraph of her letter, Dr. M noted that as an orthopaedic surgeon, who had completed an accredited hand fellowship, she has treated several scaphoid fractures both acute and chronic and that the claimant's "course is very classical for this type of injury that is not initially able to be detected."

The self-insured had Dr. V review the claimant's medical records. Dr. V stated that even if a patient with a fractured scaphoid delays in seeking medical treatment "most people know there is something wrong with their wrist because of the limited motion and discomfort. . . ." Dr. V concluded that "[a]t this late date, it would be difficult for me to certify that this injury occurred on the fall that the patient claims." Dr. V noted that the claimant had been to the doctor several times in the period from October 1993 to December 1998, when the scaphoid fracture and nonunion were diagnosed, and that it was difficult to relate the scaphoid fracture and nonunion to the 1993 fall because of the absence of complaints of wrist pain and loss of ROM in the medical records.

The carrier contends that the hearing officer's determination that the claimant's compensable injury includes the scaphoid fracture and nonunion is against the great weight of the evidence. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury and the nature and extent of the injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

As noted above, there was conflicting medical evidence on the issue of whether the claimant's fall at work caused the scaphoid fracture and nonunion. Dr. M opined that it did, while Dr. V stated that it would be difficult for him to make the connection between the fall at work and the scaphoid fracture and nonunion because of the absence of any complaints of wrist pain and loss of ROM in the claimant's medical records in the intervening period between the fall and the time these conditions were diagnosed. In his discussion, the hearing officer stated that he found Dr. M's medical opinion to be the "most persuasive." The hearing officer was acting within his province as the fact finder in so resolving the credibility issue. The factors the self-insured emphasizes on appeal are the same factors

it emphasized at the hearing, and the significance, or lack thereof, of those factors was a matter left to the discretion of the hearing officer. Our review of the record does not demonstrate that the hearing officer's extent-of-injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

The success of the self-insured's challenge to the hearing officer's disability determination is premised upon the success of its argument that the compensable injury does not include the scaphoid fracture and nonunion. Given our affirmance of the hearing officer's determination of that issue, we likewise affirm his determination that the claimant had disability from September 8, 1999, through the date of the hearing, April 25, 2000.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Gary L. Kilgore
Appeals Judge