

## APPEAL NO. 001159

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 April 20, 2000. The hearing officer determined that the appellant (claimant herein) did not sustain a compensable injury and did not have disability. The claimant appeals, arguing that the great weight and preponderance of the evidence was contrary to the hearing officer's findings in regard to injury and disability. The claimant argues that her testimony and the medical evidence established that she suffered an injury due to repetitive trauma resulting in, or at least aggravating, her carpal tunnel syndrome (CTS) and that, as a result, had disability. The respondent (carrier herein) replies that the decision of the hearing officer was sufficiently supported by the evidence and points specifically to medical evidence which stated that there was not a causal relationship between the claimant's work and her CTS.

### DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant testified that she went to work for the employer in \_\_\_\_\_ and that her work involved repetitive motions which resulted in wrist pain that was diagnosed as bilateral CTS. The claimant testified that, as a result of her CTS, she was unable to work from October 25, 1999, through the date of the CCH. The claimant presented medical evidence from her treating doctors relating her CTS to her work and placing her in an off-work status. The carrier presented testimony from the claimant's supervisor and the employer's human resource representative to show that the claimant's work duties were not repetitive. The carrier also put into evidence a report from Dr. H, who reviewed the claimant's medical records and expressed the opinion that the claimant's condition would not support a diagnosis of CTS and is not related to her work.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

A finding of injury may be based upon the testimony of the claimant alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present case, the hearing officer found no injury contrary to the testimony of the claimant and some of the medical evidence. There was conflicting medical evidence and it was the province of the hearing officer to resolve conflicts in the medical evidence. The claimant had the burden to prove she was injured in the course and scope of her employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition, disability depends upon a compensable injury. See Section 401.011(16).

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge